

Roger Tryphammer

THE

GRAND QUESTION

Concerning the

1669.

JUDICATURE

Of the

HOUSE OF PEERS,

Stated and Argued.

And the Case of THOMAS SKINNER
Merchant, complaining of the *East India Company*, with the proceedings thereupon, which gave occasion to that Question, faithfully related.

By a true Well-wisher to the Peace and good Government of the Kingdom, and to the Dignity and Authority of Parliaments.

by Dennis Lord Hollis who dyed Feb: 17th 1679

Judicium Dominorum Spiritualium & Temporalium est Secundum Usu[m] Consuetudinem Parlamenti. Usu[m] & Consuetudo Parlamenti est Lex Parlamenti. Lex Parlamenti est Lex Angliae,

Lex Angliae est Lex Terra;

Lex Terra est Secundum Magnam Chartam :

Ergo, Judicium Dominorum Spiritualium & Temporalium est secundum Magnam Chartam.

London, Printed for Richard Chiswell, at the two Angels and Crown in Little Britain, 1669.

M.141

38-191

M

Case
K 0451.414

JURISDICTION OF THE House of Peers

ASSERTED;

The Power of the House of Peers in Point of their Judicature having been lately called in question, upon occasion of a judgement given by them in a particular Case, which they conceived not tryable elsewhere in the Ordinary Course of Law; It will not be amiss, for the removing of all prejudice out of mens minds, to make a clear Narrative of the matter of Fact, with some Observations upon it, and the Additions of some Presidents and Arguments: Such may serve to evince and set forth the

ancient way of Proceeding in that House as to their Judicial Capacity; even the same which they have continued to practice in succeeding times, and so leave it to the Judgement and conscience of every unbiased indifferent man, to satisfie himself, If now there hath been any Innovation, any new Interchange of Power, any Variation from the constant usage and Priviledge of the Peerage in all times, Ancient and Moderne. The business was sincerely thus.

Soon after his Majesties happy Restauration, one Thomas Skinner preferred a Petition to him in Council, purporting great Oppressions and Spoils Sustained by him in the Indies from the East-India Company, robbing him of a Ship, and goods of a great value, dispossessing him of a Plantation he had there, a dwelling House & Ware-House at Iamby, and an Island called Barella (which he had bought of that King) assaulting his person to the danger of his life and several other Injuries done him; For which he prayed the Kings Justice, to appoint a Court, Constable and Marshall

Shall to Hearc and Determine those matters, they not being otherwise Determinable by the ordinary Course of Law, or to put it into any other way for Just Relief. After some years Attendance and Sollicitation and several Petitions of this poor mans, the King at last referrs it to certain Lords viz. The Lord Arch-Bishop of Canterbury, the Lord Chancellor, the Lord Privy Seal and the Lord Ashley, to call all Parties before them, and compose the matter if they could; The Order of Reference runs thus.

Whereas upon the Petition of Thomas Skinner Merchant, Setting forth his Sufferings under the barbarous oppressions of the East-India Company, His Majesty was Gratiouly pleased by Order of the 27. of August last, to deferre the clearing of the matter for creating a Court to determine affaires of this nature till the second meeting of this Board at White-Hall, and in regard the said Company have Slighted the Orders of this Board, and not complyed with any References or Mediatis, designing to weare out the Petitioners Life in tedious Attendances; He did by his

The Jurisdiction of the
Petition this day read at the Board, humbly
pray that the said Court may be now Erected,
to relieve the Petitioner according to Justice
& put a Period to his grievances; Whereupon
his Majestie present in Council did Order:
That his Grace the Lord Arch-Bishop of
Canterbury, the Lord Chancellor, Lord
Privy Seal, and the Lord Ashley do send
for the Governor and some of the Members
of the East-India Company, to treat with
them, and to induce them to give the said
Mr. Skinner such reasonable satisfactions,
as may in some measure be answerable to the
loss and damage he hath suffered under
them.

Signed John Nicholas.

These Lords Referrees met, took
much pains in it, spent several dayes;
Ordered Mr. Ayloff of Counsel with
Skinner to give them under his Hand a
true State of the business, whose report
I will here set down in Terminis.

The

The Case of Thomas Skinner Merchant
and his demands against the East-
India Company for damages done
him in the year 1659. in India.

In the year 1657. was a general Li-
berty of Trade into the East Indies ;
Then Thomas Skinner furnished and set
forth his Ship called the Thomas from
London on a trading voyage to the Indies,
and arrived there, in 1658.

The Company by their Letters the 7^o. Maij
1658, which arrived in India in No-
vember following, commanded their A-
gents to Seize all ships, and goods of Eng-
lish trading there, and dispose half to the
Common-wealth, and half to the Com-
pany.

The Agents of Bantam direct those
of Jamby to seize the Estate of Freder-
ick Skinner in the hands of Thomas ;
saying, Thomas had nothing there of
his own ; and that Thomas Leaver chiefe
of Jamby, should secure in his hands
what Estate he had of Fredericks, for
a Debt suggested owing by him to the
Company ;

6 The Jurisdiction of the

Company; upon which pretences they seized Thomas Skinners Ship and Goods, broke open his Ware-House, assaulted him in his House, and dispossess him of his Estate Barcella; for which Injuries he hopes satisfaction, and therefore in particular demands,

For 128 Peculls of Pepper, 7 Ryals
Peculls of Nutmegs, and for
Breef, strong Waters, and other
Provisions and Merchandizes,
taken out of his Ship by the
agents of Jamby and the Crew of
the Ship Dragon, in the
Companie's service.

The Company agreed the Value
Ryalls brought to their Account, but it
being prov'd, That the rest was laden on
Board Skinners Ship, this imbezlement
or subdaction by the Agents is just to lie
upon the Company.

For 128 Peculls of Pepper, 7 Ryals
Peculls of Nutmegs, and other
Provisions and Merchandizes,
taken out of his Ship by the
agents of Jamby and the Crew of
the Ship Dragon, in the
Companie's service.

For his Ship and Furniture, Ryals.
sworn by two Witnesses to be
worth, when set out, five or
six and twenty thousand pounds
sterling, and that she was worth as
much or more in India when ta-
ken, yet abate a fifth for ware and
tare rests,

8000.

For eleven small Copper Ord-
nances, and their Field Car-
riages, 350 Ryals, and two
Quoyle of Ropes 80 Ryals, in
all,

930.

B 4 For 10

For 10 Barrels of English Powder, at 25 Ryals per Barrel, and Sword Blades, Spectacles, Prospective Glasses, Boxes, Knives, Cisors, and other small Merchandizes, Iron Works, Nails, Pistols, Pictures, & Looking Glasses with Ebony Frames on board, & Ship-planks, and other wood on shore, and in the Ware-House, valued by Marmaduke Grimston, and Peter deBarrier Purser of the Ship at

Ryals.

1730.

For Money owing by Thomas Leaver to Frederick Skinner assigned to Thomas, and accepted by Leaver with promise to pay, but detained by Order of the Company, who have in their hands a greater Summe of Leavers to indemnifie them against this Demand.

1521.

For

House of Peers Asserted.

For his Charges at Jamby
six Moneths under that trouble,
and coming home over Land
from India 19 Moneths travel; > 1800.
the Companies Agents refusing
to give him passage in their
Ships,

Totall 16836 Ryalls:

Interest for 16836 Ryalls for six years.

Ryals are valued at Jamby 5 s. per
Ryal: But what they produce here, being
brought over in black Pepper to the Com-
pany clear of all Charges, is expected, they
will ingenuously own.

The Assault of his Person,
Loss of six years Time,
For Disappointment of his Trade,
Attendance and Charge here,
Diseizin of his Island.

Being valuable at more than all the
other particulars, are humbly submitted
to your Lordships Discretion.

Signed Joseph Ayloff.
The

The Lords Referees to this requiring the Answer of the Company, receive this as follows.

*To the Right Honourable the Lords
Referees, concerning the Demands
of Thomas Skinner upon the East
India Company.*

*I*N obedience to your Lordships Order and Direction, the Court of Committees of the said Company have considered of the Matter proposed by your Lordships, and do humbly offer to your Lordships; That for the Nutmegs, white Pepper, and other things, which were seized by the Justice of the place in part of a Debt due to the Company from Frederick Skinner, which said Goods were brought to the Companies Accompts, though the same were afterwards lost in the Ship Dragon; and in the regard the Accompts between the Company and Frederick are concluded, and the said Goods not included therein; the said Company have always offered to pay for the said Goods, and are now ready to pay 3160 Dollars for the same, which at 4 s. 9 d. per

House of Peers Asserted.

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per Dollar, amounts unto the summe of
750 l. 10 s. And concerning the 1521
Dollars demanded by Thomas Skinner,
as a Debt due unto him from Thomas
Leaver; they in compliance with your
Lordships desires will be ready and willing
to pay the said fifteen hundred twenty one
Dollars, amounting to 361 l. 4 s. 9 d.
to the said Thomas Skinner, so as they
may be discharged by the Administrator of
the said Thomas Leaver, to whom only
they are liable, it being very reasonable
that the Company pay the Debt but under
But the Company do utterly disallow, that
the Company can by any Law or Equity be
liable for their Factors Debts.

Concerning Skinners other Demands
for his Ship and for other Goods pretended
to be seized on shore, The Company do
humbly offer to your Lordships; That the
Company are not liable for the Debt or Adju-
on of their Factors, unless done by their
Order; and if the Company should be
liable to every ones Clamors, and preten-
ces for wrongs done, or pretended to be done
by their Factors (when if any such thing
were done, the same was not by their Or-
der)

12 The Jurisdiction of the
der or Knowledge, nor applicable to their
use and accompt) the same will necessarily
impoverish and ruin the Company: And
the Company gave no Order for the seizure
of Thomas Skinners ship, nor nothing else
of his; nor was the same brought to the
Companies accompt, and the Agents at
Bantam expressly ordered the Factors at
Jamby not to meddle with the said Thomas
Skinners ship, who acted accordingly: For
it appears clearly, That Captain Allnut
and his Mariners had his Provisions and
Stores for their Wages, and that the King
of Jamby and Jehore seized and kept the
ship; And his Goods on shore were seized
on by Chinenses, and other his Creditors;
and therefore they hope that his continual
clamours of oppression shall not take any Im-
pression in your Lordships great Judgments,
the Company not being able to put a price up-
on an oppression, where none was, at least that
they are concerned in: Yet for the procuring
of their own peace and quiet, and to prevent
all further trouble unto your Lordships and
the Company, they do submit unto your
Lordships disposal such further summe as
will make the whole amount to 1500 l.
which

House of Peers Asserted.

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which is more than his Ship and Goods were ever worth, or valued at upon the Insurance at her going forth, so as the Company may have thereupon full and final Releases and Discharges from the said Thomas Skinner and Frederick Skinner;

September 28. 1666.

By Order of the said Company:

Signed Jo. Stanyon Secr,

To which Skinner makes this Reply;

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The Jurisdiction of the
Court of Common Pleas
To the Right Honourable the Lords Re-
ferees, concerning the Damages done
to Thomas Skinner Merchant, by the
East India Company.

The humble Reply of Thomas Skinner, to
the Proposals of the said Company.

THAT since the Rapine and Spoil of the Companies Agents by their commands, took from me Nutmegs, white Pepper, Provisions, &c. Of 3355 Ryals value, if but 3160 Ryals came to their Accompt, yet are they answerable for the whole, which as the Justice of Jambyes Attestation, That they took all without Reason, monishes them of the duty of Restitution, so the perishing thereof in and with the Companies Ship Dragon threatens them with the Improsperity of ill gotten goods; And then though Ryals Cost put on Ship-board in England but 4 s. 9 d. or 5 s. as they go for India, yet they come home at above 25 s. clear, as by Oath of the Companies own Servants appears, that when Pepper was sold at London but 11 d. a pound

a pound, though the Company sold
ever since Anno 1660 at 11 d. 13 d.
14 d. $\frac{1}{2}$ and upwards; therefore they are
justly so demanded with Interest.

The 1521 Ryals owing formerly by
Leaver is become the Companies Debt, not
only because he was their Servant and
Agent, but because it was seized for them,
and they have so much in their hands for
my satisfaction, and therefore are Recei-
vers thereof to my use, and may now pay it
as safely, as they ought honestly to have
paid it long since with Interest in manner
as those above mentioned.

Concerning, my ship and goods taken on
shore, my Persecution in Jamby and te-
dious Journey home, for which the Company
offer payment by Fictions and Reproaches,
the sense which the King of Jamby (who
would have made that Factory a Publick
Example, had not my importunate Inter-
cessions in Confidence to find Justice at home
prevented it) had of the Agents Inhumanity;
And which, as their own Letters wit-
ness against them, was by their Order, what
ever pretended against Frederick, execu-
ted against my self, and afterward owned by
the

The Jurisdiction of the
the Company, cannot but goade their private
Consciences, how Inseffible soever the Poli-
tique Conscience of a Corporation be, as it
did Allnurs upon his death bed, (who con-
fess and repented sorely, That he had been
inviced and incited by the Agents unjustly
against me, and had nothing of the depreda-
tions;) With what modesty do the Company
then upbraid me with pretended debts, and
calumniat the King and people of those
parts, and so much undervalue my Ship
and Oppression, when the contrary (to the
Companies Knowledg) is so clearly manifest;
Nor are they ignorant of the hopeful De-
signe in my Plantation and valuable Trade
they have destroyed me of; (which, though
it plainly appears) That my Ships intended
Voyage for Maccassor, and freight thence,
for which Consideration above 2000 Ryalls
is deducted from the Ships worth, and other
particulars in a Schedule, would have
rendred alone above 20000 l. sterlinc
yearly: Yet I submit that, and my whole
Sufferings and Concerns, to your Lordships
Determination, in hopes, That if I do not
receive an adequate Recompence; yet I shall
by his Majesties Grace, and your Lordships
Direction,

direction, be enabled by the restor-
ing of my Island Barella in India, to
reap a future benefit without the East India
Companies further molestation or interrup-
tion, His Majesties late Charter granted
the third of April 1661. prohibiting the
Company expressly to undertake any thing
against any Christian Colonie settled in India
before the date thereof.

October the 6. 1666.

Signed Thomas Skinner

The Lords Referees finding this
vast disproportion between the
demands and Pretences of the Peti-
tioner, and the real loss and damage
which he had sustained; and the Offers
on the other Side of the Company for
his Reparation and Satisfaction, and
seeing no possibility of reconciling
them, though much pains had been ta-
ken in endeavouring it, at last resolved
to report it back to the King and
Council; and made their Report as
followeth.

C

I N

In pursuance of his Majesties Order in
Council dated the three and twentieth of
March last; we have treated with the
Governor and Company of Merchants
trading into the East Indies, and have
heard the Council both of the said Company,
and Thomas Skinner Complainant, in the
disquisition whereof we found the said
Thomas Skinner to have suffered much
wrong by the said Company, and their
Agents: and therefore endeavoured to per-
suade the said Company to give satisfaction
to the Petitioner: but there being a great
difference between the Petitioners Demands
of Reparation for Damages, and the Com-
panies Offer towards the same, our Media-
tion proved ineffectual therein.

As to the Island of Barella in the East-
Indies claimed by the said Thomas
Skinner; we conceive that he ought
to enjoy the same, and from thence to
trade into any part of the world, ex-
cept into England. Given under
Our Hands the sixth day of Decem-
ber. 1666.

Signed Gilb. Cant. Clarendon C.

J. Roberts. Ashley.

His Majestie upon this finding the East-India Company would be brought to no reason, thought fit to recommend the business to the House of Peers, to do the Petitioner Justice according to the merits of his Cause, which Message was brought to the House the 19. of Januar 1666 by the Lord Privy Seal, and all the Proceedings in Council transmitted thither, and withall a Petition from Skinner himself was presented to them setting forth the wrongs done to him by the East-India Company.

The House of Peers, thus possessed of this business, Order a Copy of Skinners Petition to be given to the Governor and Company, and they to bring in their Answer to it upon Friday the 28 of January: They accordingly bring in for Aniwer a Plea to the Jurisdiction of the House of Lords, and say; That the Petition is in the Nature of an Original complaint, not brought by way of Appeal, Bill of Review, or Writ of Error, nor intermixed with Priviledge of Parliament, nor having Reference to any

The Jurisdiction of the
Judgement of that Court ; therefore offer,
If it will please to take any further Cogni-
zance of that Cause : And then plead over
and say, That the Company was incorpora-
ted by several Charters in the Reignes of
Queen Elizabeth and King James, and
likewise by a Charter from Oliver, which
excluded all others not Members of the
Corporation from trading in any part of the
East-Indies within the limits of the said
Charter, and that therefore if any such In-
juries were done, it was by vertue of the
Charter, and whether Criminal or Civil
they were for ever released and discharged
by the Act of Oblivion.

The Lords upon debate of this Plea,
well knowing their own Right to re-
tain even Original causes, when ac-
companied with such Circumstances
as this then before them had ; A poor
man oppressed by potent Adversaries,
by a rich and numerous Society, where
there was a Peer of the Realm, the
Lord Berckley of Berckley, Gentlemen of
great Estates, very many wealthy Mer-
chants incorporated in one body, dri-
ving on a great trade in the Indies with

one joyn't stock, resolved to employ that whole stock for the destruction of any man, that should presume but to touch upon that trade without their leaves, which was this poor mans Case, & in a time when he had been encouraged thereunto by a general Liberty then taken to trade in that Country; who after the spoyle of his goods and Plantation there, to save his life (they having beset his passage by Sea) was glad to expose himself to the hazard and charge of a Journey of many thousand Miles over Land, to return into *England*, that he might here endeavor to get some reparation for all those losses, which that Company with their great purse and power opposed, and had already made him spend that little Estate he had left, and seuen years attendance to prosecute that reparation without any fruite: So as to go to Law with them, and abide all the delayes and formalities even of the ordinary Proceedings at Law, much less what such Adversaries would have raised to him, he was no waies able; The Lords I say knowing

The Jurifdiction of the
all this, and that what was pretended
of the Indemnity by the Act of Oblivion
was of no validity, that Act not at all
intended for things of this nature, be-
twixt party and party not relating to
the Warr, made no difficulty to over-
rule their Plea, and enter into the dis-
quisition of the Fact, and to do the poor
man Justice and give Releife if they
found cause for it, as a work worthy of
them, much conducing to the admi-
nistration of the publick Justice of the
Kingdome, and most agreeable to the
constant practice of that House from
the very beginning of Parliaments:
Wherefore they appointed Tuesday
the 24 of Januay for the Counsel of
both sides to be heard at the Barr. But
such art was used, so many delayes
cast in by the Company and their
Counsel, as the cause could not be
brought to hearing during all that
Session of Parliament.

At the next meeting of the Parlia-
ment in the year 1667. Skinner renew'd
his suit and presented a Petition the
30. day of October, In hæc verba.

TO

TO THE
RIGHT HONOURABLE &c. &c.*The Humble Petition &c.*

THAT in the year 1657. Private Trade being open in the East-Indies, the Petitioner set forth his ship Thomas on a trading voyage to the said Indies, where being arrived in 1658 he possessed himself of a Ware-house on the River side of Jamby on which his ship rode, wherein he put a great part of his goods, and also had a house at Jamby and goods therein, and purchased of the King of Jamby the Island of Barella, and built a house for habitation, and had contracted for planting of Pepper and other Commodities thereon. That in May 1659. the Agents of the Gouvernour and the Company of Merchants of London trading into the East-Indies, by direction of the said Gouvernour and Company, and of Maurice Tompson, and Sir. Andrew Riccard, seeing the Petitioners hopeful designe in his Plantation and way of trade with his Ship, did seize for and on the be-

C 4 half

The Jurisdiction of the
half of the said Gouvernour and Company
his said Ship, goods, houses, Islands and
152¹³ Dollars of the Petitioners in the
hands of Thomas Leaver the Companies
Chief Agent at Jamby, which hath damag-
ed him 17172 l. Sterling, besides the dis-
appointment of his trade, disseizin of his
said Island, loss of above six years time
with attendance and vast charges here in
endeavors for a just satisfaction &c. being
much more valuable then all the other da-
mages; And the said Agents used many
violences upon his person in the said In-
dies, notwithstanding that the Petitioner
proffered Bail and good Security there, to
answer all their pretences; which inhu-
mane and unreasonable dealing, forced the
Petitioner through infinite hazards and ex-
pence to come most over Land for England,
to seek redress.

That in the year 1661 and continually
since he hath humbly besought his Majesty
for Justice against the said Gouvernour and
Company, and persons aforesaid; and
though his Majesty hath been graciously plea-
sed to convene the said Company and Per-
sons, and to hear the said Matters; and
also

also to referre it divers times to several Lords of his Majesties most Honourable Privy Council, to hear them and mediate an End; yet they could not be reduced to Reason nor Justice, albeit the Petitioners Wrongs and Damages were made to appear, as well by their own acknowledgement, as other evidence produced before the Lords Referees; but endeavoured by the strength of their Foynt-Purse to bear down the Petitioners Relief, though never so just, by wearying him from further Prosecution.

That the Petitioners whole Case not being remediable by the Courts below, he is constrained humbly to address himself to your Lordships, his Majesties great Council and Supreme Judicature, whom the Petitioner most humbly petitioned the last Sessions, and your Lordships were pleased to order their Attendance, but by their Dilatory Pleas and several non-attendances upon slight excuses at the day appointed by your Lordships, they frustrated the Petitioner of obtaining your Lordships Justice that Session.

wherefore

The Jurisdiction of the
wherefore he most humbly prays, That
your Lordships will be pleased to cause
the said Governour and Company and
persons aforesaid to answer the premisses
before your Lordships by a short day, and
that he may receive from your Lordships
such Relief as shall be consistent with
Justice and Equity.

And he shall pray, &c.

Signed Thomas Skinner.

The Lords upon this, order the
Company to put in their Answer in
Writing upon Wednesday the 6th. of
November. They bring in a Plea as
before, First by way of Protestation,
That all the Injuries supposed to be committed
by them and their Factors are untrue; Then
plead as formerly, That the Petition is
in the Nature of an Original Complaint,
not brought by way of appeal, &c. as
in their Plea of the last Session; but add,
And therefore these Respondents do humbly
demand the Judgement of this honourable
Court, whither it will please to take any
other

other or further Cognizance of the same; the rather, because the matters of Complaint in the Petition are such, for which remedy is ordinarily given in the Courts of Westminster-Hall, wherein these Respondents have Right to be tried, and ought not to be brought hither per saltum, nor drawn ad aliud examen: and so pray to be dismissed.

The Lords having received this Plea, to shew the clearness of their Intentions, and their tenderness of doing any thing which might but carry a Semblance, That they desired to engross to themselves the judging of particular Causes, (when determinable elsewhere, and nothing extraordinary in the Case to induce their Lordships to take Cognizance of the Matter, which apparently was in this Case of Skinners, as hath been said before) would have the Opinion of all the Judges, before they proceeded any farther; And therefore made an Order, Monday the 2d. of December, That it be referred to all the Judges to consider of Skinners Petition, and to Report to the House

The Jurisdiction of the House upon the Wednesday following, whether the Petitioner were reliable upon the matters therein mentioned in Law or Equity; and if so, in what manner, upon the several parts of the Complaints of the said Petition.

The day appointed the Judges came, and the Lord Chief Justice of the Kings Bench, reported, That all the Judges had considered of the Matter referred to them, and having met and considered thereof, were of Opinion; That the Matters touching the taking away of the Petitioners Ship and Goods, and assaulting of his Person, notwithstanding the same were done beyond the Seas, might be determined in his Majesties Ordinary Courts at Westminster; And as to the dispossessing him of his House and Island, That he was not reliable in any ordinary Court of Law.

Here then clearly by the Judges own Confession, part of the Case was not within the Power of Westminster Hall, and under favour of better Judgements, I think it will be but a venial Sin, if notwithstanding this Declaration

claration of our Sages in the Law, the Doubt do still remain with us, if some of the other points also, as that of the taking of his Ship, a Robbery committed *super alium mare*, be punishable by the Law of Westminster Hall; Nay I may not one be bold to affirm, That it is not? And may it not be doubted further, if any part of *Skinner's Case* be tryable there, and if their Fiction in Law will reach any part of it? being all for Injuries and Violence against his Person and Estate in *India*: We know, that some Judges and Lawyers make it to extend to Contracts and Bonds made beyond the Sea, which they ground upon a Case in the Year Book of 48 E. 3. fol. 2. where Sir Ralph Pole brings his Action against Sir Richard Tochester, upon an Obligation bearing date at *Harfleet in Kent*, *Lou de rei veritate Il fut fait en Normandie*; the Book saith; and his Action was held good: And Brook (who makes it to be at *Roan*, not *Harfleet*) gives the reason in his Abridgement, *Faits 98. le lieu n'est traversable, the place is not traversable*

The Jurisdiction of the
versable; which is to be understood,
when it is expressed in the Bond, for a
man cannot traverse the place against
his own Act: But the Law was ever
understood to be otherwise till then,
that the Judges would *ampliare Juris-
dictionem.*

And (to shew what the Law was
before E. 3.) it was adjudged, *Mi-
thaelmas 2 E. 2.* That no Action would
lie for a Bond made at *Barwick* (which
did not then belong to *England*) ou cest
Court nauy conisans, where the Courtt
hath not cognisance, saith *Fitzherbert*,
Obligation 15. And so *Perkins, Faites*
121. But both before and since the
Courts of Law were so far from pu-
nishing Injuries and Trespasses done
beyond Sea, That even Treason was
not tryable till the Statute of *26 H. 8.*
cap. 13. which saith, *That if any of*
the Kings Subjects shall commit Treason,
thogh out of the Limits of this Realm, it
shall be tryed in any place that the King
shall appoint by Commission under the great
Seal: So a special Commission was to
be issued for it: And several other Sta-
tutes

tutes were afterwards made of the same Nature; But for Trespasses, as this of the East India Company against Skinner, there is no Act of Parliament to authorise the Prosecution at Common Law, nor (I think) any Book Case to warrant the practice of it; Book Cases against it there are many, even for Trespasses in the Isle of Jersey, though within the Kings Dominions, because a *Venire Facias* could not go thither to summon a Jury from thence, *Mich. 42* (as Mr. Prin cites it, or 41. as Sir Edw. Cook) *E. 3. Coram Rege, rot. 109.* An Inhabitant of Jersey complains to the King and Council of false Imprisonment and several Injuries done him in the Island: They send this Bill of Complaint to the Judges of the Kings Bench, and there the Bill is dismissed, *Quia compertum est* (saith the Record) *quod negotium praedictum in curia hic terminari non potest, eò quod Juratores Insulae praeditæ hic venire non possunt,* &c. Other Cases there are of the same nature: And if a Fiction could not help for Jersey being part of the Kings Dominions, much less could it help for Foreign

Forein parts , where the King had no Authority at all. Yet the House of Lords hath in all times exercised Jurisdiction upon Crimes done and committed in Forein parts , as well as those within the Kingdome , both Treasons and other Offences , As in the Cases of the Lord Latimer for the loss of St. Saviour in Normandy , and Oppressions done by him in Britany , 50. E. 3. n. 21. Of William de Weston , for the Surrender of Outherwick in Flanders , 1. R. 2. n. 38. John de Gomeniz far Ardes , 1. R. 2. n. 40. Pierce de Cressingham and John Spickworth , for the Castle of Drinkham in Flanders , 7. R. 2. n. 17. The Bishop of Norwich , for not doing Service beyond Seas according to promise , and as he ought to have done , for delivering up Graveling to the French , not mustering his Army at Calice , as he should have done , and not having his Number compleat . n. 18. Sir William Elinsham , Sir Thomas Trevit , Sir Henry Ferrers , Sir William de Hurnedon , and Robert Fitz-Ralph , for delivering strong Holds and Fortresses for Money , n. 42.

n. 24. John Hall a Servant to the Duke
of Norfolk, for Murthering the Duke of
Gloucester at Calice, I H. 4. n. 11.
Sir William Richill for but taking the
Examination of the Duke of Gloucester
at Calice, I H. 4. n. 93. And multi-
tudes of others, who could not have
been tryed by the Common Law, were
tryed by the House of Lords: And in
truth a man may say the whole Case of
Skinner in every point of it was only
cognisable before them; However, it
being out of all dispute, even by the
Confession of the Judges, That some
things in it are not tryable in Westmin-
ster Hall, I hope it may be thought
reasonable, to leave as great an extent
of Power to the House of Peers, which
is the supreme Judicature of the King-
dome, as to the Court of Chancery,
where the ordinary practice is to retain
Cause, when there is Equity in any
part of it. The Lords therefore Or-
dered the hearing of the Cause, spent
several daies in it, and having with
much patience heard all that could be
said on both sides, appointed a day to
D consider

consider what was fit to be done. super
totam materiam: Upon which day, after
a solemn debate, they came to this
Resolution only in general, That Thomas
Skinner was to be relieved by that
House: And referred it to a Committee
to consider what damages he had
sustained by the Governour and Com-
pany trading to the *East Indies*, and to
report their Opinions, what Recom-
pence was fit to be given him for the
same.

Whilst the Business was under the
consideration of the Committee, and
before the House of Peers had made
any Determination of it, a Petition
was said to be presented by the *East
India Company*, unto the House of
Commons; which will set down
word for word before I give it any
Epithet; and upon reading it, I think
every unprejudice man will say, One
cannot give it an Epithet bad enough;
the Petition was thus:

TO THE
HONOURABLE

The Commons of ENGLAND in
Parliament Assembled.

The Humble Petition of the Governor and
Company of Merchants of London,
trading to the East Indies.

Humbly sheweth,

That Thomas Skinner lately exhibited a Petition to the Right Honourable, the Lords Spiritual and Temporal in Parliament assembled, against your Petitioners (many of which are and were Members of this Honourable House, when the said Petition was exhibited) for Injuries pretended to be done by your Petitioners Factors in the East Indies, in seizing his Ship, Goods and Money, and dispossessing him of a small Island there; all which Matters (excepting what concerns the Island) are Matters clearly determinable in his Majesties Ordinary Courts of

The Jurisdiction of the
Law, as by the Judges attending their
Lordships, hath been resolved and report-
ed. And for the Island, the same is parcel of
the Dominions of a Foreign Prince, and
so the Right thereof only determinable by
the Laws of that Prince. That though the
Petitioners did humbly tender a Plea to
their Lordships, for that the Petition was
in Nature of an Original Complaint (con-
cerning Commoners only) and was brought to
their Lordships by Writ of Error, or Bill of
Review, or any way of Appeal, and that
the Matters therein were relievable in the
Courts of Westminster Hall; and there-
upon prayed the Judgement of that High
Court, whether it would please to take fur-
ther Cognizance thereof: Yet their Lord-
ships have been pleased not only to give
hearing to all the Matters in the said Peti-
tion contained, but have denied to grant
the Petitioners a Commission, or so much
Time to send for their Witnesses now inhab-
iting upon the place, where the Injuries were
pretended to be done, and without whose
Testimony it was impossible for the Petition-
ers to make their Defence.
That upon the said hearing, their Lord-
ship

Lords were further pleased to appoint a Committee to assess damages against your Petitioners, which Committee is now proceeding thereon accordingly, whereby several Members of this Honourable House, who are of the said Company as well as others your Petitioners, may be highly detrimented. All which proceedings as your Petitioners humbly submit to your Honourable Judgements, are against the Laws and Statutes of this Nation, and Customes of Parliament. In tender Consideration whereof, and for as much as these unusual and extraordinary Proceedings of their High Lordships are not only grievous to your Petitioners at present, but may also be a Presage of ill Consequence to all the Commons of England hereafter, and for as much as your Petitioners have no way of Relief in this Case otherwise than by making such their humble Addresses to this Honourable House; your Petitioners do therefore most humbly pray, That your Honours will be pleased to take the Premisses into your grave Considerations, and to interpose with their Lordships for your Petitioners Relief there-

The Jurisdiction of the
in such way and manner as to your great
Wisdoms shall seem meet.

And your Petitioner as in duty bound,
shall pray, &c.

Signed by the Order and in the Name of
the said Governour and Company.

Robert Blackborne Secr.

Copies of this flew about, were in
every mans Pocket, and in every mans
mouth, That the Lords were even
forced to take notice of it, yet scarce
could believe the House of Commons
would receive such a Petition against
them, so scandalous and so false; nor
did they in the whole debate so much
as mention the House of Commons,
but looked upon it as a thing done
without doors, thrown abroad; only
to blast and asperse the House of
Lords, and to bring them into the ill
opinion and dis-esteem of the peo-
ple; which after a serious considera-
tion and debate, their Lordships voted,

To

To be a scandalous Libel against the House of Peers. And certainly so it was, both in Matter and Manner, and had the Matter been true, yet the Manner was scandalous: For though all had been true which was suggested, if the House of Lords had committed an Error, had done something grievous to the Petitioners, yet was it most unfit for private men to censure their Proceedings, declare them to be unusual and extraordinary, to be against the Laws and Statutes of the Nation, and Costome of Parliament, grievous to the Petitioners at present, and of ill consequence hereafter to all the Commons of England. Can the tongue of man utter more reproachful and stabbing words against any man or society of men? If this were true, do they deserve to live who are guilty of such things, to continue so much as Members of any State or Common-wealth, much less to have Power and Jurisdiction in it? Certainly to revile in this manner, and throw dirt upon the Highest Judicatory of the Kingdome,

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The Jurisdiction of the
was a most transcendent Presumption,
and of a most dangerous Consequence
to the whole Nation, even to those
Commons of England, whom these Pe-
titioners pretend for so much, making
themselves as it were, their Patrons and
Protectors, Tribunes of the people, and
and withall endeavouring to bring an
Odium upon the whole Peerage. What
is this but sowing sedition between the
two Houses of Parliament, and be-
tween the Peers and the Commons of
England? And what can it tend to, but
to the very dissolution of the Frame
of Government? The Scripture saith,
*'Thou shalt not speak evil of the Rulers of
thy People'*, and Elihu in *Job* moves this
question, *Is it fit to say to a King, Thou
art wicked, and to Princes, Ye are ungodly?*
Yet these Rabshakehs dare heap up Re-
proaches against the Lords of Parlia-
ment, and bring railing Accusations
against the Highest Order of Magi-
stracy under the King in the Kingdom.
And how little Cause was given them
for this, the preceding Narrative of
the proceedings of the Lords, is, I
think,

think, an evident demonstration. Their Lordships had proceeded with all the tenderness imaginable, nothing of heat, nothing of Precipitation had appeared in the whole Transaction ; They were not come to a full Conclusion and Determination of the business, which these Merchants had no reason to suspect that it would be severe upon them ; And they might at least have staid, till it had come what ever it had been, and not have prejudged a Court, before it had declared it self, what Judgment it would give : All it had then done, was but what the *East-India Company* it self had, by their own offer of Reparation for the wrong done, acknowledged to be Just ; For the Lords had only declared, *That Skinner was fit to be relieved* ; But what relief, how much and in what sort, the *Quid* and the *Quomodo*, they had not determined, that was under the Consideration of a Committee. They themselves in their Answer to the Lords Referrees appointed by His Majesty in Counsel, had offered to pay unto *Skinner* for Nutmegs, White Pepper,

Pepper, and some other things, which had been unjustly taken from him by their Factors and had been brought to their account, 3160 Dollars ; And 1521 Dollars more they offered, for so many taken from him in *Specie* : And by this they confess they had done him wrong, and were willing to give him some Reparation : So without condemning themselves, they can not say the Lords had as yet done amiss : and notwithstanding all this moderation and Circumspection; that opprobrious railing Petition was preferred against them ; and which besides was full of untruths.

For the main matter in it, and which in truth had carried a shew of Injustice had it been true, is absolutely false; And that is, that the Lords denied them a Commission, or time to send for Witnesses inhabiting upon the place, without whose testimony it was impossible for them to make their defence ; First it is not true, that the Lords denied them a Commission or time to send for Witnesses, for they never insisted upon it

it, which must have brought on a Resolution of the house, and have been entered in the Clerks Book, which was not : Some such thing was once said by some of the Council at Barr, but themselves went off it, knowing it would have grossly manifested their intent to delay longer a Poor man, who had already spent seven years in the prosecution of that suit ; And as untrue is it , that they could not else make their defence, for multitudes of Witnesses were produced by them, and all fully heard with Patience, and enough acknowledged even by their own Witnesses (and more by their own offer formerly mentioned) of giving Skinner so many thousand Dollars Reparation) for the Lords to ground that opinion which they had then declared, which was only. *That Skinner should be relieved:* A second untruth is ; That they say all the matters complained of were clearly determinable in the ordinary Courts of Justice , excepting what concerns the Island, whereas it appears there was likewise a dwelling house at

Jamby,

The Jurisdiction of the
Famby, and a Ware-house by the River-
tide, of which they dispossessed him, which were not so determinable even by the report of the Judges in their Opinion (but in truth one may say no part of the Complaint was so determinable;) they say untruely then in saying there was only the Hand, that he could not be relieved in, and as untruely do they vouch the Opinion of the Judges for it, who expressly mention the House as well as the Hand. A third untruth is, to say the Hand was parcell of the Dominions of a Foreigne Prince, and the Right to it only determinable by the Laws of that Prince: Whereas that Prince had made an absolute bargain and sale, and a Totall Alienation of it from his Dominion, and so had put it out of the Protection of his Laws. A fourth (and which they had inserted to be a Baite to draw on the House of Commons to espouse their Quarrel) is, that they suggest the complaint to be concerning Commoners onely, Whereas the *Lord Berckley* of Berckley a Member of the House of Peers is likewise of that

that Company, which inticles yet more particularly that House to the Cognizance of the whole business upon point of Priviledge, one of their Members being a party. All these untruths are in matter of Fact. Then for their Infidelity upon them, the Judgement they give against the House of Lords, their censure of their Proceedings, to be against the Laws of the Land, and the Custom of Parliament to be unusual and extraordinary, to be a President of ill consequence to all the Commons of England now and hereafter; this Libel no man will say to have truth in it, but to be a false Imputation and a Slander of the Lords themselves (as it is) a Scandalous Libel against the Bishops of Lords. And as untrue it is, what they say in the close of their Petition, and withhold most injurious to the House of Peers viz. That the Petitioners had no way of relief in this Case otherwise than by making their humble Addresses to the House of Commons; Whereas ever since Parliaments have been in England, the constant practice hath

hath been, (and multitudes of Presidents there are of it,) of Appealing to the next Parliament from any Judgment given by a former Parliament, which was grievous and unjust ; And never in this world before was there any Appeal to the House of Commons from a Judgment of the House of Peers, much less to take a business out of their hands, or give a stop to their Proceedings, before they were come to a conclusion ; Then which nothing can be a greater Violation of the Rights and Priviledges of either House. Nor would the House of Lords ever have endured, that any should have used the House of Commons so, in any application unto their Lordships. Yet upon the examination it appeared, that this Petition had been really presented to the House of Commons, and was there received. The Lords then fell upon the consideration of the main business in question between Skinner and the East-India Company, and making Reflexion upon what had been alledged on both sides and

and the proofs, gave this Judgment, That the Governour and Company shoule pay unto Thomas Skinner, for his losses and damages sustained, the sum of 5000 pounds, one thousand within two daies after the serving of this Judgment, two thousand pounds in three moneths after, and two thousand pounds more in three months after that.

And they referred to the Committee for Priviledges to examine, who was the publisher and disperser of that Scandalous Paper or Petition, which they had voted a Scandalous Libell, and to make Report thereof to the House.

In the disquisition of this business, which held many daies at the Committee and in the House, and where the Lords found much shuffling in the Persons they examined, who were Servants and Officers to the Company, It appeared at last, that the Petition had really been presented to the House of Commons, and well received by that House, that it had been prepared by

The Jurisdiction of the
by a Committee of the Company, that
Sir *Samuel Barnardiston* Deputy Gover-
nour of the Company, Sir *Andrew Riccard*, Mr *Rowland Wian*, and
Mr. *Christopher Boone*, were of that
Committee and Actors in it, but espe-
cially Sir *Samuel Barnardiston* the most
Active man, who gave no Satisfaction
to their Lordships in his Answers,
which the others did, and by their sub-
mission obtained favour, but the Lords
adjudged him guilty of contriving that
Scandalous Paper, and fined him
300 l. to the King, and to remain a
Prisoner in the Custody of the Black-
Rod till he paid his Fine.

And now the House of Commons
ownes the Cause, and seems not only
to Justify these Actings of the East-
India Company, but to lay blame upon
the House of Lords, and passes certain
Votes to that purpose, which they
brought up to the Lords and delivered
at a Conference.
And began with telling the Lords,
That they had examined the East-India
Companies Petition, and found the Al-
legations

legations in it to be true, That such Proceedings had been in the House of Lords : And that the Lords had since adjudged them to pay 5000 l. to Skinner, and that the House of Commons thought these Proceedings to be of so very high Concernment to the Right of all His Majesties Subjects, that they had passed those Votes upon it.

The Votes were these : 1. That the House of Lords taking Cognizance of, and their Proceedings upon the matter set forth and contained in the Petition of Thomas Skinner Merchant against the Gouvernour and Company of Merchants of London trading to the East-Indies, concerning the taking away of the Petitioners ship and goods, and assaulting his Person, and their Lordships over-ruling the Plea of the said Gouvernour and Company, the said cause coming before that House Originally, only upon the complaint of the said Skinner, and being a common Plea, is not agreeable to the Laws of this Land, and tends to deprive the Subject of his Right, Ease and Benefit due to him by the said Laws.

2. That the Lords taking Cognizance

of the Right and Title of the Island in the Petition mentioned, and giving damages thereupon against the said Governour and Company, is not Warranted by the said Law of this Land.

The Lords were much surprised with these Votes, which gave them cause to make a serious Reflection upon what had passed in the business of Skinner, and to take a due examination of all Circumstances, The way that it came unto them at first, upon the King's Recommendation, Their own Right to take Cognizance of, Judge and determine and give redress in causes of that nature; Then the merits of this particular cause, A poor man oppressed by great Ones, very unable to contest with them at Law, and so very unlikely there to receive relief, and have any reparation from them (admitting it had been in the power of the Law to have helped him, which it was not) and The manner of their Proceeding in the hearing, examining and determining of it, in which they had used all the moderation Imaginable, going by steps and degrees, taking

taking first the Opinion of the Judges, to know if the man were reliable else where; who said he was but in part, and not for all reliable in *Westminster-Hall*, which made them undertake it; Then giving way to and bearing with many delayes of the *East India Company*, suffering the business upoa several Pretences and excuses of theirs to be put off many daies, when their Lordships were prepared to hear it, and had laid aside other businels for it, by which means a whole Session was lost to the poor man; And when at the next meeting of the Parliament it was heard, in which a great deal of time, and very many daies were spent, yet not presently to come to a resolution, but appoint a day for the debate of it, and when that day came, not to give a full Judgment, but only pass a previous Vote, *That some Relief was fit to be given*, and take longer time to consider What and How much, and referr it to the Consideration of a Committee to prepare it for the House; And that

52 *The Jurisdiction of the*
then, in that Interim of time, before
any thing was determined, whilst but
in Agitation and under consideration
what should be done, a Scandalous faſt
railing Petition to be delivered to the
House of Commons against the House
of Peers contrary to all usage, Right
and Priviledge of Parliament, and what
was expressly forbidden 9, H. 4. N. 22.
And this notwithstanding (not known
upon what mistake, for a mistake it must
have been) to be received with appro-
bation by the House of Commons, and
seconded and confirmed by those fore-
mentioned Votes, which were brought
up to the Lords, and declared unto
them at a Publick Conference : All
these things considered, made the Lord
very sensible, who thought, if there had
been failings, that a gentler application
had yet been more convenient ; but
conscious to themselves of none, and
very confident that what they had done
was most Justifiable by the conſtant
course and practice of their House, and
in it ſelf most Just and Equitable, they
conceived it absolutely necessary for the

Vindi-

indication of themselves and the asserting of their Rights, to pass likewise two votes in Answer to the two of the House of Commons.

That the House of Commons entertaining the Scandalous Petition of the East India Company against the Lords House of Parliament, and their Proceedings, Examinations and Votes thereupon had and made, are a Breach of the Priviledges of the House of Peers, and contrary to the faire correspontency which ought to be betweene the two Houses of Parliament, and unexampled in former times.

That the House of Peers taking Cognisance of the Cause of Thomas Skinner Merchant, a Person highly oppressed and injured in East India by the Governoour and Company of Merchants of London trading thither, and over-ruling the Plea of the said Company, and adjudging 5000 l. damages thereupon against the said Governoour and Company, is agreeable to the Laws of the Land, and well warranted by the Law and Custome of Parliament, and Justified by many Parliamentary Presidents Ancient and modern.

Two Conferences past between the
Houses upon this occasion : One asked
by the House of Commons, the other
by the Lords, and what past at both,
the objections of the one side, and the
others Answers, What was said by
the Commons against the Proceedings
of the Lords, and what by the Lords to
maintaine what they had done; the sub-
stance of all that was said on both sides
I shall here set downe as briefly as
can, as I find them entred in the Jour-
nal Book of the House of Lords, where
they are now a Publick Record.

The Gentlemen of the House of Com-
mons, that managed the Conference of
their parts, endeavored to maintian their
votes by shewing the reasons of them.

They said, that Pleas being of two na-
tures, Common Pleas and Pleas of the
Crown, in this Case they said they did
not meddle with any part of their Lord-
ships Judicature concerning Pleas of the
Crown, this being of the First sort
and those being of two natures Per-
sonal, or Real actions, and in both all pro-
ceedings must be by the Kings Origina-

Writ

Writ. And this being a Case between Person and Person, and so a common Plea, ought to be proceeded in the Ordinary way, by the Kings Original Writ: Presidents were brought for this, ushered in with a Preamble That where the party never pleades to the Jurisdiction of the Court, it is ordinary for Courts to proceed, though in Cases not within their Jurisdiction. The Presidents cited were out of the *Placita Parliamentaria*, four in Ed. 1. time.

1. President, 18. E. 1. *Johannes de Insula against the Bishop of Winton* fol. 33. John de Insula prosecutes for the King, complains that the Bishop had disposed of an Hospitall which belonged to Queen Eleonor the Kings Mother, and ejected her Tenant, the Bishop Pleads, that he found his Church seised of that advowson, & petit Judicium si debet sine Brevi Domini Regis inde respondere; The Judgement is, *Et quia predictus Episcopus invenit Ecclesiam suam sefiam de praedicta advocatione tempore creationis sua, Ideo ipse quoad hoc eat inde fine die ad presens, & Dominus Rex habeat breve versus ipsum Episcopum, quod reddat*

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et Advocationem &c. & quoad Ejctionem
inquiratur veritas per Parriam.

2. President, in the same Parliament
18. E. I. The Case of Hugh de Lohier and
the Heirs of Henry de Edelysthorp,
P. 43 Where it was much insisted upon
these words, *Nec est Juris consonum vel*
hastenus in Curia ista usitatum, quod aliquis
sine Legge Communis & Brevi de Cancellaria
de Libero Tenemento suo respondeat, Et
maxime in Casu ubi Breve de Can-
cellaria locum habere potest, There-
fore, dictum est prudico Adie, quod sibi
perquisirat per Breve de Cancellaria,
si sibi viderit expedire.

3. The Case of William de Valentia
Earl of Pembrook, Jone his Wife and
Isabell le Mareschal 18. E. I. p. 44.
Isabell Complaines of the Earl for assu-
ming Jurisdiction in the Commote or
Hundred of Esterlow, (which is in the
Kings County of Kenmerdyn, and not
in Pembrook-shire which belongs to the
Earl,) and ejecting her; He pleads that
he is seised of it in the Right of his Wife,
and they crave Judgement, si sine Brevi
Dominii Regis inde debent respondere;

the

The Judgment is Quia prædicti Willielmus & Johanna sunt in Scisina de prædicta Jurisdictione per discentum hereditarium, & non per Usurpationem seu Purplesuram, quod eant inde sine die ad præsens, & Dominus Rex habeat Breve si voluerit. The Gentlemen of the House of Commons obsettved upon this, That if there had been a Crime, as Usurpation or Purplesure, such Cases had usually been tryed in the Lords House, but then added, That if that had been the Case, much might be said now, how the Constitution of the Government hath been altered since.

The 4 th President in the 18. of E. R. F. 51. was the Case of Roger de Somerton and the Prior of Buttele ; Somerton followes for the King, and by Petition complains, that the Prior unjustly withheld from the King the manor of Somerton. The Prior Answers, that he holds it in the Right of his Church of Buttele, So petit Judicium siodebeat inde sine Breve Domini Regis respondere ; The Judgment is, Ideo prædictus Prior quoad hoc eat inde sine die ad præsens, & Dominus Rex habeat Breve &c. And

The Jurisdiction of the
And this though the King was concerned,
as was observed by them.
By these Presidents they said, it did
appear, that in Cases of Free-hold there is
no Proceeding without an original Writ,
and then necessarily and Demonstratively
it must follow; That the Lords can not
Judge in these Cases, for there was never
any Writt Returnable Coram Dominis
Spiritualibus &c Temporalibus, none
such is found in the Register or Fitzher-
berts Natura Brevium: And the reason
they said was the same for Personal Actions,
as those that concern Free-hold, that
Magna Charta and several Statutes
made in Ed. 3. time provide for our Try-
all by our Peers.

Some other Presidents they men-
tioned out of the Roll of Petitions answe-
red in the Parliament of 14. E. 2. as that
of William le Rows F. 408. Complaining
of the Kings Bayliffs, who had twice
dispossessed him of a house in Westmin-
ster, and praying remedy; the answer was;
Habeat Breve nova dissidencia in suo casu.

Then that of the Bishop of Winton
Elect in the same page, Complaining
that

that the Kings Officers had cut down
the woods of the Bishoprick during the
vacancy and praying remedy; The An-
swer is, *Habeat Breve de Transgress. in
Canc.*

Next of *Joane* the widdow of *John*
Fouks p. 409. by Petition Complaining
of a waste committed in the Mannor of
Radewynter; The answer is, *sequatur ad
Legem Communem.*

Another President of *Mariote* the wife
of *Robert de Carle* in the same page, pray-
ing remedy for a breach of the Peace by
the Parson of *wormele* and others, the
Answer is, *Adeat Cancel. & habeat ibi
Breve in suo Casu.*

And to a Petition of *Robert le Sausser*
p. 410 for a debt due to him, Answered,
habeat in Cancell. Breve de debito.

The last President cited was p. 411.
Ralph de Draiton Parson of *Luffenham*
complaining against *Robert de Vere* and
others for imprisoning him, till he resig-
ned his living, taking away his goods,
and committing other violences, for
which he had a Commission of inquiry in
the Country of *York*, and now prayed,
remedy

60 *The Jurisdiction of the
remedy, The answer is, quoad Resignationem
non pertinet ad Regem, & quoad Commissionem
habendam, ostendat in Cancellaria primam
Commissionem & ibi respondeatur. Et ha-
beat similiter in Cancell. Brevia de Trans-
gressionibus sibi factis contra pacem &c.*

To this first part of that Conference, the Lords when they came to theirs, gave for Answer in the first place, That they could not but observe some thing unusual in the very title of the Petition, differing from the ancient Stile of those presented to the House of Commons ; Then that they were much surprised, reading the Petition to find so many falsities, and yet to heare the Gentlemen that managed for the House of Commons say, that their House had examined it, and found all the Allegations in it to be true ; Whereas in truth there were in it almost as many Falshoods as Lines ; those Falshoods have been mentioned before, so as it is not needfull again to repeat them. The Lords took notice after, of the unusual Proceeding of the House of Commons, to take Cognizance of any matter depending

pending in their House, before their Lordships had given any Judgment therin, or communicated the same unto them; And to examine, proceed upon, and censure by vote the Proceeding of the House of Peers, which they said the House of Commons could not Legally do, because they were not a Court of Judicature in any case, much less of the House of Peers, which is the Highest Judicature: And that in truth they had not means to come to the Knowledge of the truth, whereby to found a Right Judgment, because they have not power to give an Oath; Nor in this particular had they heard any more then one side, having not heard Skinner at all: Nor yet had they conferred with the Lords, by which meanes they might have come to the knowledge of the grounds and reasons, upon which their Lordships had proceeded; So as the Lords could not but wonder at this Judgement, which had been past upon them.

Then they came to that Assertion concerning Common Pleas, That they

must

The Jurisdiction of the
must be proceeded in by the Kings Original
writ, and consequently not before the Lords,
for which the House of Commons
brought some Presidents, to prove that
Free-holds were never examined in Parlia-
ment but always left to the remedy at Law;
And in the next place the Lords took
into Consideration how they began their
Presidents with this Preamble ; That
where the party never Pleads to the Juris-
diction of the Court, it is ordinary for Courts
to proceed though in Cases not within their
Jurisdiction.

To which the Lords said in the first
place, as to the Assertion viz. That all
Common Pleas must be proceeded in by Ori-
ginal Writ and Consequently not before the
Lords, That it was as easy for them to
assert the contrary, and upon better
grounds ; Being able to shew Presi-
dents all along from the first and the
most ancient Records we have, down
to the latest and most moderne ones
of the Proceedings of Parliaments,
even within the memory and know-
ledge of every young man, that the
House of Peers have still exercised
this

this Jurisdiction, even in particular Cases of *Meum & Tuum*, between man and man, when they have thought good, (though that but rarely) and when moved to it by some thing extraordinary in the Case; and that no House of Peers hath done it less, and been more ready of entertaining such businesses, and more unwilling to be troubled with them, than this present House of Peers, upon which so much blame is laid, and which is the only House of Peers that ever Private Persons (found guilty and censured by it for foul Oppressions) did presume in that manner to accuse and impeach to any Court or Council or Company of men, nor not to the King himself; Or that ever were censured, and such votes passed upon before. But we shall hereafter in its due place examine the matter of this Assertion, and shall shew that it holds not true even in the ordinary Courts of *Westminster-Hall*, whither of common Law, or Equity, where Cases of mens Free-holds are tryed every day with-

without any original Writt, and much
less in Parliament. In the mean time
we will take things in order as they
were delivered.

And to the Preamble which usherd
in the Presidents, That where is the
Party never pleads to the Juris-
diction, it is ordinary for Courts to
proceed, though in Cases not within
their Jurisdiction, upon which the
Inference must be, that Presidents then
signify nothing to prove a Juris-
diction though never so many, though
a constant Series of them in all times
be made appear, except there be
still a pleading to the Jurisdiction, and
that Plea overruled; The Lords thought
this a strange Argumentation, and
took the force of the Argument to lye
rather the other way, That it is a
clearer Proofer of a Jurisdiction, to have
it never or seldom questioned, and
be still exercised and submitted unto,
then if it be some times opposed,
though it be made good and maintained
against that Opposition: And they
thought, that in this particular Case,
they

they had good Warrant for their Jurisdiction, finding it so seldom opposed, even by the House of Commons own shewing, who could bring but four Presidents, where any had pleaded to their Jurisdiction, and the Plea seemingly admitted, (for it is but seemingly, as will be shewed upon the Examination of the Presidents themselves:) Whereas multitudes were produced of the exercise of their Jurisdiction, and some, Where the parties had desired a tryall at common Law; and the Lords would not grant it, as that of William Paynell and Margaret his Wife in the Placita Parliamentaria of the 30 of Ed. I. p. 231. The Case was this; Margaret had been formerly the wife of John Cameys, and he yet living had left him, (as she alledged) with his consent, and lived with Paynell as his wife, and was married to him: Cameys dying, Paynell and she sue for the Thirds of the Mannor of Torpell which had been the Land of Cameys. It was objected on the other side, That she lived in Adultery with Paynell in Cameys life time, and

*so had forfeited her Dower. They upon
that desire to be tryed by their Country, if
Adultery or no; what say the House of Peers?
Do they send them into the Country as is
desired? No, Videtur Curiæ quod non
est necesse contra tantas tamque mani-
festas Evidentias, Præsumptiones, Pro-
bationes &c. ad aliquam Inquisitionem
Particulæ Capiendam procedere &c.
Et ideo consideratum est quod præ-
dicti Willielmus & Margareta nihil
Cipient per Petitionem suam, sed sint
in Misericordia pro falso Clamore
&c.*

This shewes that the Lords some-
times would retain Causes, though
sometimes they did dismisse them, not
for want of Jurisdiction, but as it
seemed to them convenient, and their
Occasions would give leave, & as they
had or had not leisure for it from the
greater Affaires of the Kingdome, or
that some Circumstances in the merits
of a Cause made it more or les worthy
of their Consideration. As if one of the
parties was powerfull in his Country,
and suspected to have an Influence
upon

upon the Juries, the Lords would then some times retain a business, and determine it themselves.

As in 3 R. 2. N. 24. The Case of John Earl of Pembroke and William le Zouch Complaining that they were sued for certain Lands in York-shire by Thomas the Sonne of Sir Robert Roos of Ingmanthorp, and alledge, That the said Thomas sought to come to a tryall in the Country, which he had gained and corrupted. And therefore pray for redress, and a tryall by Parliament giving this reason for it, Que lls partels Malveis Compassemens, et Procurementens en pais ne soient desheritez. That they may not lose their inheritance by such wicked contrivances and practises in the Country. Do the Lords then suffer it to go on to tryall in the Country? No, They take the matter into their own hands, appoint *John Knewet*, and *John Cavendish* Chief Justice, and *John Belknap* Chief Justice of the Common Pleas to examine it and make Report to them, which they did.

And so likewise in the Case of Pon-
F 2 tyngdon

The Jurisdiction of the
tyngdon and Courtney 4 H. 4. N. 21. Sir
Phillip Courneya great man in the Coun-
try oppresses Pontyngdon, dispossesses him
of his Land by force, he comes to the Lords,
praises Put Dieu Et en oeuure de Char-
rite d'ordeigner remedies en cell Cas;
For Gods sake and as a work of charity that
they would give remedy in this case. Sets
forth in his Petition, that he had before in
a Parliament held at Winchester made
his complaint, at which time Sir Phillip
laid the Bastardy of his Father as a Barr,
and that the Lords Answer then was, That
he should have right done him, and com-
mitted the business to the Arch-Bishop of
Canterbury to take care of it; That before
the Arch-Bishop, Sir Phillip and he agreed
to go to a tryall upon that Issue, and that
there should be a sufficient Jury of the prin-
cipal Knights and Esquires of the Country.
But that Sir Phillip had named some of
those principal men, and withall poor men
of less sufficiency, to the intent, that the
great men making default, the poor shoulde
stand, and that these poor men durst no Ba
against Sir Phillip, maintain the tru
(les queux poures hommes n'oisenly
envers

envers le dit Sir Phillip la verite dire)
That thereupon be Petitioned again the
Lords in the next Parliament sitting at
Westminster, and informed them of all
these Particulars, whereupon they Ordered a
Writ to go to the Judges of Assize of that
Country, commanding them to admit none to
be of the Jury, but such as had 40 l. a year
Land, and those to be chosen out of the
whole Country notwithstanding any usage or
Challenge to the Contrary; But that now
Sir Phillip finding that the charge of Ba-
stardy would not hold, contriving still the
wrongful disinherison of the Petitioner, had
startet a release unduely gotten from one
Thomas Pontyngdon a Parson, whose
beirethe Petitioner is, And the Petitioner
is thereby like to be ruined si il neit vostre
ties Hautissime et tres excellent secours
et aide) if the Lords would not afford him
their most High and excellent succour and
help. This was the effect of the Petition.

The Lords upon this make an Order to di-
bouned the tryall, the Point in Issue to be the
Bastardy, that the Release should be laid
aside as null and void, that if the Bastar-
dity be proved, Pontyngdon shall be for ever

barred to sue hereafter, and if not proved, but that his Father was Mulier, he should then recover the Land with Costs and damages ; And they further Order a Writ to the Sheriff to Impannell none of the Jury, that had not 40 l. per annum Land. So then three several times, in three several Parliaments did the Lords take Cognizance of this Cause, being a Common Plea for a mans Free-hold, and that Originally in the first Instance, not upon an appeal, or Writ of Error, or any of those waies to which the House of Commons would now limit them ; They direct the tryall, the Issue, the Condition and Qualification of the Jury, and the Judgment : and if this be not taking Cognizance of a Cause, I know not what is : And well was it for that poor Gentleman, That the Lords had that Jurisdiction, that they could take Cognizance of his Cause, to give him relief then : As now it was well for Skinner, That the Lords took Cognizance of his : Otherwise th's powerfull Company had trampled him in the dirt and rained him, as that violent man

man Sir Phillip Courtney (for so he appears to have been by several Complaints against him in the Parliaments of those times) had served Pontyngdon: And well will it still be for many a poor man to have such an Asylum, such a City of refuge to fly unto, to save himself from the violence and Oppression of power and greatness. And perhaps some of those who now endeavour to lay low the House of Peers, whowould make it to be of no signification, to have no power, no Influence upon the Kingdome, be as salt that hath lost its Savor, only *Magni Nominis umbra*, a Name of Peerage without ability to help themselves or any body else; perhaps I say, even some of them, should they prevail now, may hereafter repent it, and wish they had not removed an Ancient Land Mark, which heretofore was in Veneration, and looked upon, as that which bounds both power and Liberty, and is a guard to both by keeping both within their due limits, and hath ever been held most necessary to the Constitution

tution the Government of this Kingdome for the Preservation of it, and as servicable to Monarchy for the keeping up of Regal Dignity and Authority, as usefull to the Subject for the maintaining of his just Liberty and Freedome.

But let us go on with the Conference, and see what was said by the Lords to the Presidents cited by the Commons.

To the first of *John de Insula* against the Bishop of Winchester, the Lords said, it was no dismission of the Bishop for want of Jurisdiction, for then it would not have been said, *Eat inde ad præsens*, but rather *ad perpetuum*; This is but a Temporary dismission, no more but as if they had said, Well, the Bishop saith, he was seised of that advowson in Right of his Church; Let the King (for whom *John de Insula* prosecutes) take his Writ out of the Chancery, and try for that; And for the Ejection Complained of, let that be tryed by a Jury of the Country, and see if things can be so ended; If not, come again

again then, and we will hear you ; But for the Present we dismiss you. So the Lords concluded, That this President made nothing against their Jurisdiction.

To the 2^d of *Hugh de Louther* and the Heire of *Edelyngtborp*, upon which the Commons did so much insist, and particularly upon the expression, *Nec est Juri consonum, nec hancenus in ista curia usitatum &c.* The Lords said, That neither this President well examined would make much against them ; For that *Adam* concerning whom and upon whose occasion that was said, was not at all before the Lords, as a Partie in the Cause before them, but came in of himself, unsent for, unlooked for, layes in a claime which the Lords of that Parliament had not heard of before, nor did at all then question ; So as it cannot be said that there was any dismission of him, or of his busines ; But the Lords say, Let him pursue and recover his Land by a Writ out of the Chancery if he will, and that he sees it convenient for him (*si sibi Viderit expedit*)

The Jurisdiction of the
pedire) and they go on to determine the
business, which was before them ; The
Case was thus, Thomas de Normanvill
an Escheator had order concerning Hugh
de Louther for certain Lands then in his
Possession which had been seised into the
Kings hands , as held of him in Capite
formerly by Henry de Edelyngthorp, to
whom one Eston had granted them and to
the Heirs of his body lawfully begotten; and
having none to returne to Eston, under
whom now Louther claimed. The order
was, That Louther should give Pledge to
come and Answer at that Parliament for the
profits of those Lands to the King: Louther
comes as he was bound, and at the same
time one Adam comes also, pretends him-
self to be Son and Heire to Edelyngthorp,
and demands the Land, Louther said, he
is a Bastard, and the Lands belong not to
him : And the Lords they say, they have
nothing to do with him, let him sue for his
Land where he thinks best, and so send him
away, But Louther they adjudge to do his
homage, and to be Answerable to the King
for the Rent ; And for the Title of the
Land , what do they do they let it alone,
and

and meddle no more with it, as a thing not at all within their Cognizance or Jurisdiction. Nothing less; They Command the Escheator Normanvil to make enquiry upon Oath, if Edelyngchorp had any Heire lawfully begotten, who he was, and upon what Title he claimed, and to give on account of it at the next Parliament, Ita quod idem Escheator ad proximum Parliamentum post Festum Sancti Michaelis Domino Regi distincte et aperte inde respondeat. So as the Lords then were farr from thinking they must not meddle with such things: And for that expression of Non est consonum &c. rendred as the ground of that Judgment of dismission; First it is answered, it was no Judgment at all, not only of dismission, for Adam was no party in the Cause; Then it is no part of the Judgment, if there were a Judgment, but precedes it; The Judgment such as it is, or rather the Answer to Adams demand, followes in these wörds, Dicatum est prædictio Ada quod sibi perquirat per Breve de Cancellaria si sibi viderit expedire, So as the preceding words, may

The Jurisdiction of the
perhaps have been but inserted by the
Clerk that entred the Order ; But take
it at the strongest, Admit that the Lords
then present in the House had inserted
those words, as their sence at that time,
Is that binding to the House, that it
may not be of an other opinion at an
other time ? In that very Parliament of
18 E. i. How many times have they
been of an other mind ? How many ex-
amples are there of Particular Causes
Judged and determined by them ? And
shall one Swallow make a Summer,
one singlē President overballance multi-
tudes of Presidents to the Contrary ?

In the last place it was said, That
this President did not *Quadrare*, sute
with this present Cale of Skinners,
for it was merely concerning a *Li-*
berum Tenementum and within the Realm
where the Law had free Course, here is
Rapine, Oppression, Spoiling of goods,
dispossessing one of an Island in Forrein
parts, *extra potestatem Legis*, assaulting
the Person of a fellow Subject, a violent
Interruption of the trade and commerce
of the Nation ; Which concernes the
Govern-

Government of the Kingdome, is a matter of State, and highly entrenches upon the Authority of the King, which will suffer much, if he suffer one subject to exercise a Tyrannicall Dominion over an other, though in an other Country: And is against the profit of the King, which is much concerned, That no violence be used in the management of trade, to bring a Scandal upon the Nation, make it stinke in Forrein parts, that none will have to do with us, which must needs become the ruine of our trade and so of all His Customes.

If one Merchant do that which is prejudicial to an other, or to a Company, let them Complain of him to the King, who will command him home and punish him: And if he will not come (for that may be objected) being so farr off, out of reach, then the King will give them leave that are wronged and grieved by him to right themselves. But that they should do it of themselves and in their own Case be Judges, Witnesses and Executioners,

78 *The Jurisdiction of the*
against all reason and Justice. So
the Lords were not at all convinced
with this President neither, but still
thought, they had done very well in
Censuring the *East-India Company* for
their Misdemeanors and wrongs done
to *Skinner*, and in adjudging them to
give *Skinner* Reparation for it.

The 3^d President was that of *William de Valentia* and *Isabell de Mareschal*, in
which the Lords observed the dis-
mission to have been only *ad præsens*; But withall observed, that the bare rea-
ding of the Case in the Book will satis-
fy one of the Jurisdiction of the Peers,
to retaine such Causes: It sayes, *That William de Valentia had at the fore going Parliament been Ad querelas Isabellæ le Mareschall allocutus et ad rationem positus, impleaded and put to Answer, by what right he assumed such an Office and such Power in the Hundred of Hostelege, and that he then alledged he did it in the Right of his Wife, and that it being his Wifes Inheritance he ought not to be put to answere without her, Ita quod datus fuit dies ei ad hunc diem ad Parliamentum Domini*

Domini Regis viz. a die Paschæ in
iures Septimanas. And then his wife
and he appeared by their Attorney, and after
pleadings, The Judgment is, Quia præ-
dicti Willielmus Et Johanna sunt in
seisina de prædicta Jurisdictione et de
Hæreditate ipsius Johanna per def-
censum hæreditarium et non per Usur-
pationem seu Purprestutam &c. Con-
sideratum est, quod eant inde sine die
quoad præsens; Et Dominus Rex ha-
beat Breve si voluerit &c. The Lords
knew they had Jurisdiction, else they
would have dismissed the Cause the
Parliament before, and not have adjour-
ned it to the next Parliament upon that
ground to make the Wife a Party, as
we see they did: And whereas the
Commons had upon this President ob-
served, that if there had been Crime in
the Case, as Usurpation or Purpre-
sture, then they acknowledged that in
such Cases the House of Lords did
usually proceed and try them, but
Withall added, That if that were the
question, much might be said how the
Constitution of Government hath been

The Jurisdiction of the
since altered: So as they soon retracted
their admittance of but so much of the
Lords Right, and what they had given.
with their right hand, they would soon
take again with their left.

But first, for their Concession of
Judging Crime, the Lords say, that
suffices for their Indemnity, as to what
they have done in this particular Case
of the *East-India Company* and *Skinner*,
for here is Crime sufficient, and Usur-
pation and Purpresture, taking them
in the larger sense for invading any
other mans Right, and not only where
the King is concerned, as those termes
are taken some times: And then for the
Qualification of their Gift upon the
Change and alteration of the Govern-
ment, The Lords Answer, That when
they shew the Time, when that altera-
tion was made, and the Persons by
whom, and the Manner how (if Legally
done) they shal then believe & submit,
and not till then: But they never heard
of any thing, that till now so much as
looked that way, except that Vote of
the Assembly called the Rump, *which*
declared

declared the House of Lords useles and dangerous and therefore to be abolished and taken away; and by a Clubb Law they did take it away. But even they that passed that Vote, and did make that Clubb Law, thought the Judicature necessary and fit to be continued, for they immediatly assumed it to themselves, and fairly voted themselves into that Powet by the Name of the Commons of England, the very same Title that the East-India Company do now make use of in their Petition to the House of Commons.

To the 4th of Roger de Somerton prosecuting for the King, and complaining of the Prior of Buttele, for unjustly withholding from the King the manor of Somerton; And the Judgment upon it, *Ideo prædictus Prior quo ad hoc eat inde sine die et præsens:* The Lords say, it is but a Temporary dismission as the others were, and signifies nothing as to the point of Jurisdiction: And they wish

H the

82 *The Jurisdiction of the*
the Commons would have pleased
to cast their eye upon the ensuing
Case in the same lease, of *William*
de Valentia again, and of him upon
the same occasion (concerning his
Wifes Inheritance as formerly,) where
there is not a Dismissal of the
Cause as formerly, but a determina-
tion of it, and that determination
again referred unto and confirmed by a
succeeding Parliament, to shew that
the House of Lords sometimes would,
and sometimes would not Judge and de-
termine such causes as were brought be-
fore them: That Case was thus, *William*
de Valentia Complaines of the Lords of the
Counsel for admitting, during the Kings ab-
sence beyond the Seas, one *Dionisia* a preten-
ded Daughter of *William de Monte*
Caniso Tenant to the King of Lands
held in Capite and formerly enjoyed
by her Father in his life time, Where-
as his Wife was true Heire to that
William, and the Land belonging to
her; The Lords of the Councel justifie
what they have done, say that *Dioni-
sia* was notoriously known to be the
true

true Daughter of that William, and that the Bishop of Winchester, in whose Diocese she was born, testified it, The Judgment is, *Ideo videtur domino Regi quod praedictus Comes, Thesaurar.* & *Alij de consilio bene et rite processerunt.* It is not now *sibi perquirat per Breve de Cancell.* They do not referr him to the Chancery, as they did in the other Case. This was in 18 E. I. In 20 E. I. p. 103. he comes again to Parliament, and renewes his Complaint, and that Judgment given before is confirmed; the words are these, *et de alijs Petitionibus suis viz. De hereditate Willielmi de Monte Caniso petenda, et etiam quod procedatur juxta Bullam quam idem Willielmus et Johanna impetrarunt ad infraeundum Processum, per quod Dionisia filia praedicti Willielmi Legitima censebarur, alias eis responsum fuit viz. in Parlamento post Natale Domini Anno 18.* ut patet in Rotulis ejusdem Parliamenti, *Ad quam Responsum se teneant &c.* Nothing can be clearer then the continual practice of this Jurisdiction in the House of Lords, whensoever they pleased.

H 2 Not

Not that it hath alwaies pleased them
to trouble themselves with exercising
this Jurisdiction, their time having been
so taken up some times with busynesses
of a higher Nature, that they could not
attend it, so as many times they have
ryed up themselves by an Order of the
House, not to receive any private
business : As in the Close Roll 18 E. I.
There is a memorable Order to that
purpose ; I will set it down at length in
the very words, which are these,
*Pur ces Ke la gent Ke venent al Parle-
ment le Roy sunt sovent destuez et destour-
bez a grant grevance de eux e de la Cury
par la multitudine des Peticions Ke sun-
bitez devant le Roy, de querre le
plus porreient estre esployez par Chancelier
et par Justices, purveu est, Ke toutes les
Petitions Ke tuchent le sel regnent primu-
al Chancelier, e ceux Ke tuchent Justici-
u ley weyment a Justices, e ceux Ke
tuchent Fuerie weyment a Justices de la
Fuerie. Et si les besoings seent si
grans u si de graces, Ke le Chancelier
e ces autres ne le pussent fere sans le
Rey, dunkt Ils les porterunt par leur meiu-*

de meyne devant le Roy pur sauver
mi sa volonte. Ensi que nulle Peti-
tion ne veigne devant le Roy e son Con-
seil fors par les majns des avaunt ditz
Chanceler e les autres Chef Ministres.
Ensi que le Roy e sun Conseil puissent sanz
charge de autre busoignes entendre a gros-
ses busoignes de sun Rcaume e de ses Forei-
nes Terres. Thus in English, In regard the
People who come to the Kings Parliament,
are oft delayed and disturbed to the great
grievance of themselves and of the Court, by
the multitude of Petitions exhibited before
the King, of which most could be dispatched by
the Chancellor and Justices; It is provided,
That all Petitions, that concerne the Seal
shall come first to the Chancellor, and those
that concerne the Exchequer to the Exche-
quer, and those that concerne the Justices
in the Law shall come to the Justices, and
those that concerne the Jewes to the Justices
appointed for the Jewes; And if the busi-
nesses be so great, or so of Grace, as the
Chancellor and the rest can not end them
without the King, then they shall with their
own hands bring them before the King to
know his pleasure therein; So as no Peti-
tion

The Jurisdiction of the
tion shall come to the King and his Counsel,
but brought by the Chancellor and those
Chief Ministers : that so the King and his
Counsel may without the trouble of other bu-
sines attend the great busynesses of his King-
dome, and of his forrein Dominions.

This is the Order, in which two rea-
sons are expressed, for their not recei-
ving particular Petitions, one in the be-
ginaing the other in the end, First the
ease of the Petitioners, and of the House
it self, which for their multitudes could
not give every one his dispatch; and se-
condly, that freed of them it might at-
tend the Publick business of the King-
dome; Not for want of Jurisdiction. And
yet be all manner of businesses so put
by? No! Great ones, and such as
need grace and favor are still reserved:
But take it at the strongest, admit they
had put all out of their own power,
yet it will be granted, they had power,
till they did in this manner divest them-
selves of it; It appears they had by the
Order it self, which mentions such
multitudes of Petitions; I then aske, if
such resolution of the House at that
time

time could be binding to perpetuity ? The Houses of Parliament we know are masters of their own Orders, and themselves when they please alter the Orders they have made ; much less then be they binding to succeeding Parliaments. And it is obvious to every man, who will either look into the Records of Ancient Parliaments, or will but recollect his Memory and call to mind what hath passed in our late Parliaments, that in all times the House of Peers hath acted contrary to this Order ; Taking Cognizance even of smaller matters , which the ordinary Courts of Justice do every day dispatch : And no House of Peers did ever do it less then this, which in truth hath not done it at all, though it be now so quarrelled with for having relieved one poor man from the oppression of the mighty, when no inferior Court could do it : And this too the only Cause of this Nature, that they have medled with during this whole Parliament, which hath lasted so many years, and hath had so many Sessions ; And a Cause particularly

recommended unto them by the King
(who is the Fountaine of all Justice;) not one taken up by themselves, which makes not their Case the worse, as it may well be hoped.

But suppose there had been no Reservation at all in that Order of 8 E. I. of any Cause or any business, but that the King and Lords had at that time bound up themselves absolutely from meddling with any of those Petitioners Cases, and for the Present waved the exercise of their Jurisdiction in all such matters, had this been a Renouncing of their Jurisdiction and quitting it forever? No Court but may upon some particular occasion suspende and wave it's Jurisdiction, it doth not therefore follow that it must never make use of it again. The Court of Chancery doth sometimes appoint a Tryall at Law of points in a Cause, which it might have determined it self, if it had pleased: And at an other time it will determine things of the same nature, The House of Peers may do the same and wave their Jurisdiction when they

they please. It did it 13 R. 2. N. 10. in Changeours Case. Adam Changeour (So is his Name in the Record though the Exact Abridgement call him John) petitions the King and Lords against Sir Robert Knolls, Setts forth, how owing 1000 l. to Sir Robert and his Wife Constance, he had let him have Lands to receive the Rent till he was Satisfied his debt; That Sir Robert had received more then his money due, yet kept the Land, so prayes remedy. The Answer is indorsed upon the Petition, Let a writ be directed to Sir Robert Knolls to appear in Parliament the Friday after Candlemas next, to Answer the things contained in the Petition. Upon bearing the business the Lords leave it to be tryed at the Common Law. This seemes a stronger President for trying all at Law and not in Parliament, then any which the Gentlemen of the House of Commons urged at the Conference; For here was an absolute dismission of the Cause, and not *ad praesens* only, as was in their Presidents. But I believe such wise and knowing men could not but see, that this President would

would not so much have helpt one way, as done prejudice to their Case another way. The Prejudice, it would have done, had been this, that themselves by their own shewing had overthrown one of their maine Arguments, which was, That all Proceedings in cases of Freehold should be by the Kings Writ, and that no Writ was ever made Returnble *Coram Dominis Spiritualibus et Temporalibus*; Whereas here had been in their own President mention of a Writ returnable in Parliament, which is *Tantamount*, and signifies the same thing: But I have in this Discourse given Examples of several others in the same kind, where Writs are issued by Order of Parliament returnable in Parliament and many more there are, if it were necessary and worth the trouble to set them down. And then, what had they gotten by telling us, That the Lords once would not retaine a Cause, which was tryable at Law, and would for once wave their Jurisdiction in such Matters? When it was shewed to them by multitudes of Presidents,

That

That the Lords had most frequently done otherwise at other times in Cases of the same Nature,

And Presidents in the Affirmative are those that prove a jurisdiction, especially when many in number are produced, and some of all times and in every Kings Reign (of which the Records can be had,) which shewes a Continuance of, and so an unquestionable Right to such a power. One, or two, or twenty then in the Negative (that the Lords did not do so in such and such Cases) Nay I say more, were the Number equall, as many in the Negative as in the Affirmative, yet it could not disprove their Jurisdiction; It would only shew, that their Lordships were free Agents, to do it, or not do it, as they saw Cause; But their Jurisdiction remained still entire to do it, whensoever they would.

And when all is done, I may say, all this is *Nihil ad rem*, and concernes not the point in question, which is, If the Lords have done well or ill in relieving Skinner against the East-India

Company, for he was not relievable at the Common Law (as hath been shewed :) And if he had not been relieved, there had been a failer of Justice: So as there was a necessity of their Lordships acting in that particular, to keep up the publiick Justice of the Kingdome. And all Presidents, and all that can be said and urged, to shew that the House of Peers ought not to meddle with matters determinable at Law, are in truth out of doors, and can not concerne this House of Peers, which never did it, but the contrary; For whensover it appeared, that any business before them was proper to be tryed at Law, they presently dismissed it: Yet since their Right is questioned, they must defend it, though they gave no occasion for it, having not at all purposed that Right in execution, nor (as it may well be presumed by their proceeding hereto) ever intending it.

As to the 6 other Presidents, our Petitions Answered in the Parliament of the 14 of E. 2. which the Gentle-
men of the House of Commons them-
selve

selves seemed not to lay so much weight upon ; The Lords thought they did wisely in it, for they were not such as would bear weight to build upon ; The Lords of that Parliament, according to the several natures of the businesse Petitioned for, dismissed the Petitioners with several directions ; Which shewes they took Cognizance of those matters ; One was directed to take out his Writ *nova & diffeisinae*; and an other to bring his action of Trespass ; the third they send to the Common Law ; the fourth into the Chancery ; the fifth they Order to bring his action of debt ; the sixth who complained of several Yer things, to him they gave particular Answers, and particular Directions to every point ; One of which (they said) pertained not to the King, that is, to his Laws, so they could give no Order in it ; it was concerning the Resignation of a living, which was to be tryed by the Laws of the Church ; For the other points, they disposed them into their proper Channells. Was this to be done by a Court, that had

no Jurisdiction in these matters? No rational man can think so.

But it would be considered, that in this Case of *Skimmers* the Lords could give none of those Answers, neither *sibi perquirat per Breve de Cancellaria* nor *Sequatur ad Legem Communem*, or to bring this or the other Action. For neither Law nor Equity in the Ordinary way of the Inferior Courts could relieve him for the loss of his real Estate in the Indies: the Judges said, he was not responsible for his House and Island: So as none of those Presidents are applicable to the point in question. Not that the Law, even in the ordinary execution of it, provides not for the punishment of all Crimes: It declares against and condemns the Fact, but can not reach the person to punish him, when he hath committed that Fact in a Foreign Country, *ubi lex Angliae non currit*. And the House of Peers hath but helpt the Law to inflict such punishment upon Offenders, as by the Law was due to them, which otherwise they had escaped. And were it but

but this, it sufficiently justifies the Proceedings of the Lords in that particular Case. Then as to the Jurisdiction of that House in the generall it will be made as apparent as the Sun at Noone, how they have in all times exercised it to the relief of all persons, who stood in need of their relief, even for things done within the Kingdome.

Where the Law had provided a remedy, they applyed it; Some times themselves would take the pains, in Cases that deserved it, where there was some thing extraordinary to move them to it, and when they were at leisure from the more weighty and important Affaires of the Kingdom, Some times they would send it down to the Inferior Courts to do it for them, and give them Authority for it, (which they could not have done, if they had not had it themselves, for *Nemo dat id quod non habet*) as in the Case of certaine Rioters 11 H. 4. N. 38. in the Exact Abridgement, whom they turned over to the Kings Bench, and gave those Judges Authority to the end the busines.

where the Law had not provided, there they would not meddle themselves, and declared it so, That none else neither should presume to meddle: As upon the Petition of Martin Chamberlain in that 14 E. 2. p. 409. who upon the suppression of the Knights Templers desired to be put into the possession of a mannor, which the Templers (whilst they stood) had held of him, The Answer is, Quod non est Lex ordinata, there was no Law ordained in the case; And because the Law had not determined, how those Lands should be disposed of, the Lords would say nothing to it.

But will it not be said, that this makes good what the Commons objected, against the Lords retaining this Cause of Skinners, because some parts of it were not determinable in Westminster-Hall; Whereas, there being no Law concerning those points, till there had been one made, their Lordships should not have meddled with them? As the Lords in that Parliament of E. 2. would do nothing

in Chamberlains Case, because the Law had not provided for it; And as in those two Cases mentioned by the House of Commons, That of an Inheritrix Forfeiting by her husbands default, where (as the Statute of Westminster the second expressed it) a Durum est was in the Case; And that of the Hospital of St. Leonards 2 H. 6. N. 37. which had a clear Right to a Corn Rent, Yet the Lords could not relieve them, but both were faine to have Acts of Parliament:

This receives a twofold Answer; One, That there are other Motives in this Case to make the Lords retain it, and give Skinner Relief; Here is a poor man oppressed by a rich Company, with whom he was no waies able to wage Law: And that Consideration hath in all times prevailed with that House, which is composed of Persons of generous and noble Spirits, who can not see poor men oppressed without feeling in their hearts an Inclination and a desire to relieve them: But secondly we must distinguish between a Fact not being a Crime in the eye of the Law, which

98 *The Jurisdiction of the*
is neither *Malum in se* nor *Malum
prohibitum*, and when the Fact it self
being odious and punishable by all
Laws of God and Man, only a Circum-
stance, as the Place where it was Com-
mitte,d puts it out of the Power of the
ordinary Courts of Justice to take
Cognizance of it, which are kept to
formes, and may not transgresse
them; In the first Case, the House of
Lords can not punish that for a Crime
which the Law doth not make a
a Crime, but in the second Case God
forbid there should be such a failer of
Justice in a Kingdome, that fellow sub-
jects should robb and worry and de-
stroy one an other (though in Forrein
parts) and there should be no punish-
ment for the wrong doer, nor Relief
for the party wronged, when they
come home; For then the King might
be deprived of many a good subject,
the Land loose many of her people,
Trading receive much prejudice, and
so King and Kingdome suffer great
loss, and all without remedy.

But then say the House of Commons,
Where

where the Law hath provided, and there
is an ordinary remedy, an extraordinary
ought not to be tryed: To this the Lords
Answer, that their House is not
an extraordinary remedy, but the ordi-
nary remedy in extraordinary Cases,
and this of *Skinner's* was so, both in point
of difficulty, and point of Compassion.

And to what is said, *That it is the
Interest of all men in England to be tryed
by Juries, and there is remedy against
willful Juries by Attaint, but here is no
remedy nor no Appeal*, It is Answered,
That the Court of Chancery disposereth
of mens Estates without a Jury, Every
Court of Justice, Every Judge in his
Circuit sets Fines on mens heads upon
several occasions without a Jury;
Many are tryed for their lives and their
Liberties (which is more then Estate)
in the House of Peers upon an impeach-
ment of the House of Commons, who
are not a Jury, nor are sworn;
therefore that Assertion holds not, *That
all men in all cases are tryed by Juries*:
And for matters of Appeal, there doth
lye one to the next Parliament, or the

next Session ; But it will be said, That is to the same Persons ; And what hopes of any remedy ? For they wil make good their own Act ; To this is Answered, It is what the Law of the Land hath established ; We must not be wiser than the Law ; It is what our Ancestors thought sufficient , what hath been the practice of all times ; And if we leave Posterity in as good a Condition as our Ancestors left us, they will have no Cause to Complain. Then we must presume , that Courts of Justice will do Justice , and will do Right ; that upon better reason shewed upon the Appeal, they will alter their minds , and give an other Judgment : They have done so heretofore ; How many Judgements of Parliament have been reversed by succeeding Parliaments ? And where there is Cause for it, we must hope, they will do so again.

Then where as it is said , *That the greatness of the Charge and the Inconveniences of attending Causes in the Lords House is an Argument against their Judicature ;* They Answer, *That it is not the*

House

House of Lords, that appoints such great Fees to Counsel; it being left to their Consciences that take them, and to the will and discretion of their Clients who give them, and who (without an Act of Parliament to restraine it) may give what they will, or rather what they must: However The Lords say, that the charge in Chancery is greater, there having been some times forty, fifty Orders made in one Cause; and the delay much greater, so as some Causes have lasted there very many years: And even at the Common Law, how many Verdicts have been given in one Cause, contrary Verdicts, one for the Plaintiff, another for the Defendant? Contrary Rules of Court, the Judges give a Rule one day, and three daies after give an other deane contrary? As an Instance of it can be given but of last Trinity Term in the Kings Bench. These are Inconveniences, that lye not in the House of Peers. But admit there were Inconveniences: Many Laws are found inconvenient, which yet are put in execution,

The Jurisdiction of the
and all obedience given to them,
whilst they stand unrepealed. And
the Question is not now of Convenient
or Inconvenient, but matter of Right.
Is it the Right of the House of Peers
hath it still been the Custome and
Usage of Parliaments, and consequent-
ly the Law of Parliament, that they
should exercise such a Power of Judi-
cature? If it be so (as it is and will be
sufficiently proved) then the point of
Conveniency or Inconveniency is out
of doors; Well may it be a motive to
alter it by the Law. But we will play
with them at their own Weapon, and
joyn Issue upon that point, that the In-
conveniency is but imaginary, and so
farr from an Inconvenience, that it is
the great advantage of the subject that
it should be so: As well to give relief
in Cases otherwise unreliable, as to
assist and help on the administration of
Justice, when sometimes the greatness
and power of some persons would else
bear down, or much obstruct and hin-
der the Proceedings of Inferior Courts.

An objection also was raised, *How*
shall

Shall the Lords Judgements be executed after the Rising of the Parliament? For so the subject may be deceived: And when he thinks, that with much Charge he hath made an end of his business, he is never the nearer; And it is Answered, that the House of Peers is not as the House of Commons, whose Orders are only of force, whilst they are sitting, they have power sufficient to require Obedience to their Judgements; Nor hath it been knownen, that ever to any Judgement of the House of Peers was not submitted unto and obeyed, till now in this Case of Skinners, that the East-India Company stands out in so defiance, and refuseth all Obedience to it is it. In 15 R. 2. N. 17. in the Case of that the Abbot of St Oseches complaining elies against John Rokell for divers Embrace- nes, and for not obeying an Order of the Duke of Lancasters made therein, the Lords Confirmé that Order, and else charge the Lord Chancellor to see Rokell him perform it. Why may not the rts. Lords do the same still, if they doubt How of Obedience to their Orders? But shall there was never question made of itbe-

164 *The Jurisdiction of the*
fore: And there are many Presidents of
Orders given to persons to act some-
thing in the Intervalls of Parliaments,
& to give an account of it to the Lords
at the next ensuing Parliament, which
shewes, that their Authority stil con-
tinues, to empower those persons to
act and to execute their Orders even
when the Parliament is risen; 15 E.
3. N. 48. *The Bishops of Duresme and*
Salisbury, the Earl of Northampton,
Warwick, Arundell and Salisbury are
appointed to take the Answer of the Arch-
bishop of Canterbury, and to report it to the
next Parliament: And 5 & E. 3. N. 96.
It is there spetified, How in the Parliament
before, one Hugh Stafford had been ac-
cused of divers Extortions, and that
Commission was then granted to the Earl
of Suffolk and Sir John Cavendish to in-
quire into it, who so had done, and had
found him guiltless by 18 Enquests, which
Sir John Cavendish did in that present
Parliament witness to be true: By all this
it appears, that the Authority of the
House of Peers ends not with the Par-
liament, but their Judgements still con-
tinue in full force and power; And
the

they may appoint Persons to see them executed if they please.

And whereas the House of Commons doth not deny them a power of Judicature upon Writs of Error and upon Appeals, Will not the same objection lye as well against their Judgements in those Cases ? For seldom that they be put in execution before the Parliament rise, so it takes away their whole Judicature, as in truth all the other objections would do, could they be made good.

And whereas it was said, That none of the Kings Courts can give remedy, where the Kings Writ can not run ; And where his Majesties Sovereignty doth not come, the Jurisdiction of the Peers can have no place ; It was Answered, that there Chiefly the Power of the House of Peers is to give remedy, because it only can : As for Treasons (till the Statutes of 26 H. 8. c. 13. 32. H. 8. c. 2. and 5 E. 6. c. 11. which have made them tryable within the Realm) and all Misdemeanors committed in Forrein parts, which never were, nor

L yet

The Jurisdiction of the
yet are, tryable at the Common Law:
Of this there are multitudes of Presi-
dents, *Gomeniz, Weston, Segrave, Hall,*
Richill &c.

And here within the Kingdome the
the Kings Writ doth not originally
run in all places, as for example, in the
Counties Palatine, yet no man will
deny the Authority of the Lords in Par-
liament taking place there; 9 R. 2. N.

13. The Duke of Lancaster complaines of
Sir John Stanley for not suing out his
Livery for the Mannor of Latham in the
Dukes Court of Chancery, and yet entring
upon it; They declare his Entry unlawful, and
Order him to sue out his livery in the
Dukes Court. The Kings Writ did sin-
not run there, but the Authority of the
Lords did.

Another Objection was, That all Pre-
ceedings ought to be in Latin, and no Record
to be in English: But the Lord Re-
had thought, That none had ever yet in-
doubted, but the House of Peers had
been a Court of Record, where all the
Proceedings & Orders & Judgements
have been in English ever since H. 6. by
time.

time. All Acts of Parliament in English. All impeachments, even those brought up by the House of Commons, the Proceedings, and the Sentence, all in English. The Ancient Records were in French, and the Pleadings likewise, till the Statute of 36 E. 3. c. 15. which appoints Pleadings to be in English, and to be entred and enrolled in Latin (so the Print saith, but in Sir Robert Cottons Abridgement of the Records it is observed his that the Record it self warrants no such thing:) Then the Chancery Proceedings are all in English, The Pleadings, Ordainers, and Decrees: Yet it will not be denied but that is a Court of Record; did Sir Edward Coke, who alone is of another Opinion concerning the Chancery, and upon that ground, because the Proceeding is in English, yet makes the House of Commons it self a Court of Record, where every body knowes all yes in English; Inst. 4. part p. 23. so haue doth not sibi constare.

The last Objection and indeed the Chief one (if true) was, That it deprives the Subject of the benefit of

Magna Charta, which will have all men
to be tryed by their Peers, or by the Law of
the Land; And the 25 of Ed. 3. C. 4.
that none shall be apprehended upon Petition
to the King or Counsel, (and Counsel
here they interpreted to be the House
of Lords) but upon indictment or present-
ment, or by writ Original; And the 42.
of E. 3. which is to the same purpose; It
was urged further that no writ was ever
made returnable Coram Dominis Spi-
ritualibus et Temporalibus; And it was
said in Regard of the Island, being in a For-
rein Princes Jurisdiction, that it ought
to have been done by Act of Parliament, for
that no Court of his Majestie can give re-
medy, where his Majesties Writ can not
run, nor can the Jurisdiction of the House
of Peers have place there: An other ob-
servation they had upon Lex Terræ in
Magna Charta, That in the Arguments
of the Kings learned Counsel 3. Car.
They made Lex Terræ to be the pleasure of
the King, And the Lords were desired to
consider upon this, if by arguing that the
Proceedings of their House were maintained
to be Secundum Legem Terræ, it may

not

not as well be said that Magna Charta will have men to be tryed Per Judicium Parium aut per Legem Terræ, That is, by the will of the Lords.

This is the substance of what was most materially urged against the Lords at that Conference. Some other things were said, rather to entertain the Bystanders, than for any thing else; as the question asked *How the Lords should see further beyond sea than other men*; Indeed the Lords thought they might see as farr as other men, and as farr as the Court of Chancery or any other Court, but never undertook to see further: But they think, if some may have their wills, they may be laid so low, that they shall then see but a very little way; but that is not yet.

And another pretty Dilemma was made, which was this, *Are the Lords bound to receive all Petitions or not?* if bound, they may refuse none, for Magna Charta saith Nulli negabimus, and the King is Debitor Justitiae to all his subjects; if they be not bound, then they must be partial, to receive some and dismiss others:

But this *Argumentum bicorne* hurts with neither horne ; For the Lords in these very Presidents brought by the House of Commons in Ed. 1. Ed. 2. time did not deny Justice, when they sent the Petitioners unto those several Courts; where they should receive it, one to the Chancery, an other to the Common Law, and directed one to bring such an Action, another a differing one, according to their several Cases : And in those multitudes of Presidents brought by the Lords where Causes have been retained and determined in that House, they can not justly be charged with Partiality , when they are moved thereunto by some thing extraordinary in those Cases, which requires their Relief, and that it can not be had else where; And a Question may be put on the other side, whither it can be believed, that Partiality was imputed to all the Parliaments heretofore, which at their first sitting appointed Committees, Tryers of Petitions for England, for Ireland, for Gascony, nay for Flanders (where the King had no Dominion)

minion) and sometimes in general, for all places beyond the Seas, to examine which were fit to be received, which not; And those Parliaments that the *Modus Parliamenti* speaks of, when a little before the rising of the Parliament, Proclamation was made in Publick places, to know if any had business to the Parliament, if any had Petitioned the Parliament & their Petition had not been answered; Certainly those Parliaments then did not apprehend to be reproached either with Partiality or deniall of Justice. And I would aske this further, If they can think that such a Committee of Tryers would have rejected *Skinner's Petition*, and have said The Lords can take no Cognizance of your busines, because it is concerning things done beyond Sea, when themselves were a Committee appointed only for such busineses.

But to let these *Sarcasmes* pass, and see rather what was said and may be said to the more solid objections, concerning *Magna Charta* and those other Statutes, which they will have to condemne the

The Jurisdiction of the
Proceedings of the Lords. First it may
be observed as a thing very strange, that
in above 400 years since *Magna Charta*
was first made a Law, it was never till
now found out, that the Lords had bro-
ken that Law by the exercise of this
Jurisdiction, nor were they ever charg-
ed with it before. But besides, do
they by this any more break it, than the
Court of Chancery, which by a Decree
disposes of a mans Lands, or the Court
of the Constable and Marshall, which
takes away a mans life, or any other
Court where the Judge for a Con-
tempt presently sends a man to Prison
or claps a Fine on his head, so takes
both person and Estate, or the same
House of Lords, when it Commits a
man upon an Impeachment of the House
of Commons, Judges, and Condemnes
him; Here is no *Judicium Parium* (that
is most certain) nor *Lex Terræ*, if you
take it for an Original Writ; And yet
no man will say, any of this is contrary
to *Magna Charta*: Why then may not
the Proceedings of the House of Peers,
when it punishesth a man for robbing
and

and assaulting his fellow subject in as strange Country, which puts the business out of the Cognizance of the ordinary Courts of Justice, receive as favourable a Construction? It can not be said, that the House of Commons, by their taking Cognizance of a Fact, & by their previous examination of it, and declaration upon it, giving it the Denomination of Treason or of any other lesser Crime, can create a Jurisdiction in the House of Peers, which it had not before; and give it new power and Authority to pass a condemnation upon the guilty Person, yet is it the Ordinary practice of the House of Commons (who have a Grand Committee of Grievances for that purpose) to impeach men so before the Lords.

They could receive not long since a Petition of one *Taylor* complaining against the Lord *Mordant* for oppression and false imprisonment, and the injurious taking away of an Office from him at *Windsor*: All which were properly tryable in *Westminster-Hall*, yet they could bring this up to the Lord s,

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and

The Jurisdiction of the
and crave Reparations and Damages
in the Name of the Commons of Eng-
land. And the Lords must not, though
at the Kings recommendation, receive
a Petition from *Skinner*, and give him
relief for his whole Estate by violence
and with a strong hand taken from him,
part at Sea, part upon Land, in a strange
Country, in neither of which the
Courts of *Westminster* can afford him
any help; For this must be against
Magna Charta; So rather then the
Lords shall do it, this must be a Fail-
er of Justice in the Land, the King
shall not be able to protect his subjects,
the oppressor shall go free, and the cry
of the oppressed shall go up to heaven
for Judgement upon the Land, because
he finds not Justice in it for his Relief.

98.105.
But I remember what the Gentle-
men of the House of Commons said at
the Conference, That therefore the Lords
should not have given Relief in this Case,
because there was no remedy at all at Law; do
This Objection hath been already an-
swered, therefore I shall not repeat it to
here; only use one Argument more *ad hominem*

bominum, that they forget what themselves have done this very Parliament, entertaining a Complaint of one *Farmer* against the Lord *Willoughby* (who is since dead) for dispossessing him of his Estate, and other wrongs done him in the *Barbadoes*, which could not be tryed in *Westminster-Hall*, which yet they were preparing to bring up to the Lords, by way of Impeachment, if the Lord *Willoughby* had not dyed; And there is reason to believe, that if *Skinner* had in the like manner applied himself to them, there had been no breach of *Magna Charta*, nor no exceptions taken at the great charge of the Subject appealing to the House of Commons and prosecution there (though the charge be every whit as great and becomes much greater to the party that prosecutes, for when he hath done there, then he must begin again in the House of Lords, so the charge is double,) and the Judgement when it comes is never a whit more in Latin it to make it a Record, then if the business had begun first in the Lords House, &c as

much is it without Jury or Appeal, and no less danger of the non-execution of the Judgement after the rising of the Parliament; In Fine all that is said against the Lords Proceedings now, might as well be said against them then; And to say the truth, if it be well considered, it wil be found, that the consequence of this opposition (should it work it's effect, and prevail) would be the overturning of the very foundation of all Authority of Parliament; that it might then well be said of the whole Parliament, that it did sit only to make Laws and give Subsidies.

But all this proves not the exercise of the Lords Judicature to be warranted by *Magna Charta*, it only saith, that other Courts, and the House of Commons it self do as bad: Which is no Justification of the Lords; For to err with Company is not to be free from fault. Let us then see, what may be said to clear them all, but principally and Chiefly this Judicature of the House of Peers, which is the mark shot at.

And

And to do this, we must examine the Disjunctive proposition in *Magna Charta*, which saith, that every man shal be tryed *Per Legale Judicium Parium suorum, vel per Legem Terre*; For if the Lords judge by either of these, they are well enough: And Sir Ed. Coke shall determine the question, whom no man can suspect of partiality for the House of Lords: He tells us in his 2. Inst. E. 51. That *Lex Terra* is *Lex Angliae*, not *Voluntas Regis* as the Commons said; the Kings Counsel would have it to be 3. *Car.* And less *voluntas Dominorum*; For it is not in an arbitrary way the Lords proceed, but according to the Law of the Land; to punish nothing but what the Law makes punishable, and Judge every thing according to Right, *secundum equum et bonum*. So then *Per Legem Terrae* is all one with *Per Legem Angliae*, or *secundum Legem et Consuetudinem Angliae*, and what ever is done *secundum Legem Angliae* is done *Per Legem Terrae*; And in his 1 Inst. l. 1. c. 1. Sect. 3. He tells us what *Lex Angliae* is, he saith there are divers

Laws within the Realme of *England*,
and reckons them up, *Lex et Consuetudo
Parliamenti* is in the front of them ; He
names many more, the Civil Law by
which the Court of Constable and Mar-
shall, and the Court of Admiralty and
Ecclesiastical Courts do act, the Law of
War for the Court Martiall to act by,
the Law of Merchants, the law of Stan-
neries, Particular Customes in several
places of the Kingdome, Statute Lawes
established by Authority of Parlia-
ment. Whoever and whatever is
tryed by any of these Laws be it for
life, Lands, or goods, it is still accord-
ing to *Magna Charta* and though not
Per Judicium Parium, yet *Per Legem Ter-
rae*. The Law and Custome of Parlia-
ment is one of these, and the Lords
now acting agreeably to that, act
agreeably to *Magna Charta*, and that
they have acted so, is I think sufficient-
ly proved allready, and will be further
hereafter, when we shew you Presi-
dents for it, from the beginning of
Parliaments.

So for the other Statutes of the 25
of

of E. 3. c. 4. and the 42. c. 3. They do not at all concerne the House of Peers, and were made only to prevent Vexation by Petitions and false accusations before the King and his Privy Counsel, as appeares by the Preambles of those Statutes. Though the Gentlemen of the House of Commons who managed the Conference were pleased to give them an other Interpretation, and to say, that the Petitions and suggestions to the King or his Counsel, which are condemned by those Statutes, are to be understood of those brought to the King and House of Lords; But can it be rationally believed, That the House of Peers of those times should themselves make so many Lawes, pass so many Acts of Parliament (five in the space of 17 years the 25 of E. 3. c. 4. the 28 c. 3. the 37 c. 18. the 38 c. 9. the 42 c. 3. all of them prohibiting that any man should be apprehended, imprisoned or disinherited upon an accusation or suggestion to the King or his Counsel, and enjoyning all Proceedings, to be by Original Writ, or by Inditement, or

by Presentment of good and lawfull People of the Neighbourhood;) And they know themselves to be intended by those Acts, and yet still should act contrary to them, judge and determine so many Causes both Criminal and Civil, as they did from time to time.

Nay can it be believed, That the House of Commons in those daies would bring up Impeachments against men to have them tryed at the Lords Barr, if they did then conceive that those Acts of Parliament did forbid the Lords to meddle; For though the Commons House are sometimes called the Grand Inquest of the Kingdome to present the Grievances thereof, it is presumed they will not say, that their Presentment is the Presentment intended by those Statutes; For the Presentment mentioned there is the very description and true Character of your County Juries: The words of the Statute are; *The Presentment of good and lawful people of the same neighbourhood, where such Deeds be done;* And can any man think, that this is to be understood

stood of the House of Commons ? No certainly ; What then is it that makes the Lords Proceedings upon the Impeachments of the Commons to be Legal and not contrary to those Acts of Parliament ; Since there is neither Writ nor Inditement nor Presentment, and yet men are brought to tryal condemned and executed by their Judgements ? but only this, that it is the Common Law of the Land, being the Ancient, unquestioned, and undoubted Law and Usage of Parliaments. And thereby is there a clear demonstration of the true meaning of those Statutes, that it was the Regulation of the Kings Privy Counsel they aimed at, and not of the House of Lords ; that Counsel, of which Sir John Lee was one in that 42 of E. 3. n. 23. who was tryed and censured by that very Parliament, in which that Act was made : One of the Articles against him was, That being of the Kings Counsel, and Steward of his House he caused sundry men to be attached and brought before him, and made them answer singly to him, as if it had been to the body of the Counsel ; He was fined for

The Jurisdiction of the
it, and committed to the Tower. The
Lords John Nevil was likewise of this
Counsel, & for misbehaving himself in it,
Judgment of Imprisonment, and loss of
Lands, goods, and Office was given upon
him, 50 E. 3. n. 34. And in the same Par-
liament n. 18. The Lord Latimer was
accused for divers miscarriages being a
Counsellor, and for them he was by the
Bishops and Lords committed to the keeping
of the Marshall of England; and adjudged
to make Fine and Ransome at the Kings
pleasure. It is true he was enlarged present-
ly by the Earl Marshall, one Arch-Bishop,
three Bishops, the Prior of St. John, three
Earls, fifteen Barons; and thirteen
Knights being his Manucaptors, but
the Commons desired further, that he
might be no longer of the Kings Coun-
sel which was granted; ; And this was
not to put him out of the Lords House,
for he continued still a Member there,
and had his Writ of Summons to come
to the next Parliament in the 51^{th.} year
of that King. There is nothing more
clear, then that those Statutes are all
to be understood to mean the Privy
Counsel; and so did the two Houses of
Par-

Parliament interpret them 3 Car. in their Petition of Right, where the expression is, That against the tenor of those Statutes divers were detained by his Majesties special command certified by the Lords of the Privy Council; and one may boldly affirme that never any Statute, or Act of Parliament did term the House of Lords the Kings Counsel,

So that Article of *Magna Charta* urged likewise at the Conference, *Communia Placita non sequantur nostram curiam,* concernes not them neither; It was to fix the Court of Common Pleas, which (as all other Courts) was before that Ambulatory, and followed the King where ever he was, if he was in the Kingdome; and the Writs were made returnable *Coram nobis ubicunque fuerimus,* which was a great Grievance to the subject, and cause of many discontinuances in suites; The following words clear it, *Sed teneantur in aliquo certa loco;* Now the place of the meeting of the Parliament was alwaies certainly known, being expressed in the Writ of

*Summons, which shewes, it was not
meant for them.*

And whereas it was said, *That in Cases of Freehold there is no Proceeding without an Original Writ; Scarle any that walkes Westminster-Hall but knows the contrary, and the Course of Proceeding to be so farr otherwise, as that not one Tryal for Land of forty comes on upon such a Writ; But by the delivery only of a Declaration of Trespass and Ejectment, any mans Inheritance of never so much value may be questioned, and brought to Tryal if it shall continue his or no; Nay, There is an Act of Parliament 18 El. c. 14. which provides expressly, That after a verdict given, the want of an Original writ shall be no Cause of Error to be pleaded in Arrest of Judgement, but that Judgement and Execution shall follow; So farr is it from being true, that no Freehold can be judged without an Original Writ. And faine would I aske, what Original Writ they use in Chancery to sue men there for their Freehold? Is it any more, then for the Complainant to put in his Petitionary*

nary Bill of Complaint, then take out a Writ of Subpœna for the Defendant to come in and answer by such a day ; just what was heretofore used in the House of Lords, the Plaintiff put in his Petition, and the House ordered a Writ of Summons to Issue out to call in the Defendant ; But in later times that House (as is usuall for all Courts to alter their Method of Proceeding, and find out some more compendious and easy way both for themselves, and for Suitors) so have they instead of a Writ as formerly, (which asked more time and charge to take out,) made it now, that an Order of the House shall be sufficient for that purpose, but they may returne to their Writs of Summons again when they please.

And as to Original Writs, how unseasonable is it and against all reason, to make it now an Objection against the Judicature of the House of Peers, That the Proceedings there not being upon those Writs, they ought not to meddle with matters of Freehold, Since the Practice of the Law is now so changed, that even In-

seior Courts have left off the use of them: whereas heretofore, when all other Courts were by the Law and the practise of those times tyed to those Forms, the House of Lords was not, but exercised still their Judicature intheir own Parliamentary way without Original Writs; yet no such exception was then taken, but all their Judgements were still allowed of, approved and obeyed, and punctually executed.

And the other Assertion doth not operate much neither, viz. That *was never heard of a Writ Returnable
ram Dominis Spiritu alibus et Temporalibus.* For if it be meant of Original Writs, what doth that signify, seeing they are not at all necessary, nor not used now for Commencing of suits even in *Westminster-Hall*, much less in Parliament, where the use hath ever been otherwise? And if meant of other Writs, it is a foul mistake: For it hath been the Common practice of the House of Peers, especially in former times, upon any Complaint made to them by Petition, to Order a Writ

to issue out with the Petition annexed, or containing the matter of it, directed sometimes to the party himself petitioned against, commanding him to appear, sometimes to the Sheriff of the County, commanding him to summon the party, to appear before them at a certain day, and the Writ withall to be then returned, so to enter into the examination of the busines, and afterwards proceed to Judgement: Ancient Presidents of this are sans nombre: 25 E. I. m. 14. Upon Complaint of the Archbishop of York, That the Advouson of the Rectory of Bridgeford was detained from him by Boniface de Salucijs, a writ reciting the matter complained of is ordered to be sent unto him, requiring him to appear in Parliament the morrow after St. Gregory the Pope at Carlile, and shew cause Quare ad finalem expeditionem predictorum negotiorum minime fuerit procedendum, why the House should not proceed to a final dispatch of the busines; and he was enjoyned to bring the Writ with him, habeas ibi tunc hoc Breye is the close of the Writ. The Printed Book of
N 4 the

*The Jurisdiction of the
the Placita Parliamentaria in Ed. 1.
time, is full of Presidents of this Nature,
& I have in this discourse cited very ma-
ny both out of that Book & other Re-
cords of Parliament under the other
Kings : I shal not therefore heap up any
number here, though it were easie to
do : I will only give a short account of
one, which seemes to me a memorable
one out of that Book of the Pacita
Parliamentaria p. 1. 57. the 21 of E. 1.
Magdulphus sonne of Malcolin Earl of
Fife in Scotland complaines in Parlia-
ment to King Edward, That John King
of Scotland had wrongfully dispossessed
him of certain Lands in Scotland called
Reyes and Crey, whereupon King
Edward directs his Writ to the Sheriff of
Northumberland, commanding him to
go into Scotland, (taking persons with him
to testifie it) and there deliver a Writ of
Summons to the King of Scotland to ap-
pear before him such a day, ad responden-
dum prædicto Magdulpho super præ-
missis et ad faciendum et recipiendum
ulterius, quod Justitia requireret :
which was by the Sheriff performed at
Striveling the morrow after St. Peter*

ad vincula, who made his returne accordingly to the Parliament : And the King of Scotland appeared at his day, and was asked, if the Kings Writ had been delivered to him by the said Sheriff, which he acknowledged, and said further Quod semper paratus est et erit Brevia et mandata Regis ut Domini sui admittente : Then he was bid to deliver in the writ, and he said he had delivered it to his Chancellor, and the Chancellor examined said he had it not there: But yet upon the Kings acknowledgement that he had received such a writ, his appearance was admitted, and he was willed to Answer to the matter of complaint put in by Magdulphus. His Answer was, That he was King of Scotland, and could not, without the Counsel and Advice of the good men of his Kingdome, speak to anything that concerned it. This was judged by the Parliament to be Contemptus manifestus et Inobedientia expressa, and it was further Ordered that three of the Principal Castles of Scotland should be seised into the Kings hands, and so remain Quo-usque de contemptu et

O

Ino-

Inobedientia predicta eidem Domino Regi satisfecit. But the King of Scotland came before the pronouncing of the sentence Coram Rege et Consilio suo, et fecit Domino Regi quandam Supplicationem ore suo proprio per verbi subscripta, which words were these, Sire Ieo tuy vostre home du Royaulme d'Escoce; et vous prie que de ceo que vous me avez mis adeuant que touche les gens de mon Royaulme aussy come a moy, voillez mettre en soeffrance, jesques a taunt que ieo ay a eux parle, que ieo ne fey suppris per defaut de Conseil, deficium les gens que cy sont oue moy ne moy voillent ne osent conseiller saus autre du Royaulme; et quand ieo me averay a eux consaile, ieo vous respondray a vostre primer Parliament apres Pasch le Conseil qil moy averont donnez, et fray envers vous ce que fere deveray. Sir I am your liege man for the Kingdome of Scotland, and do pray, that as to what you have proposed unto me, which concernes the People of my Kingdome as well as my self, you will have patience till I can speak with them, that I be

not surprised for want of Counsel, seeing those
who are here with me, will not nor dare not
give me their advice without the rest of the
Kingdome: And when I shall have ad-
vised with them, I shall give you for Answer
at your first Parliament after Easter that
which they shall counfel me, and shall
do unto you that which I ought to do. This
request of his did King Edward grant,
the Record saith. Et Dominus Rex habito
super hoc Consilio ad Rogatum præ-
dictum prædicti Regis Scotie, et etiam
ad Instantiam Procerum et Magnarum
de Consilio suo, et Gratia sua speciali,
et similiter de Consensu prædicti Magt
dulphi, concessit ipsi Regi Scotie sup-
plicationem suam, et diem ei dedit ad
Parliamentum suum post Pascha vix.
in Crastino Sancte Trinitatis &c, in om-
nibus in eodem statu quo nunc, Idem
dies datus est præfato Magdulpho.
Ex per ipsum dominum Regem dictum
et præfato Regi Scotie, et injunctum,
quod habeat ad præfatum terminum
prædicta Brevia, quæ cognovit se re-
cepisse ut supra dictum est: He must not
forget to bring the writs with him.

1 R. 2. n. 29. A Scire facias is awarded against the Earl of March to appear before the Lords at the next Parliament, and to abide further Order : And 2 R. 2. n. 33. the Sheriff of Shropshire makes his return, that the same Earl was not found in his Bayliwick, it seemes he was dead, for there was then an other Scire facias ordered to warne his Son, who was then Earl, to be and Answer at the next Parliament after.

13 R. 2. n. 12. Upon a complaint of the Bishop and Dean and Chapter of Lincolne against the Mayor and Townesmen for some wrongs done them in Execution of their Charter, by order of Parliament a Writ was directed to the Mayor and Bayliffs of the Town, to appear at a certain day before the Lords, with Authority from their commonalty, for abiding their Lordships determination ; they appear, but no coming with full Power, they are adjudged in Contempt. By the same Parliament such a Writ is directed likewise to the Mayor and Bayliffs of Cambridge upon Petition and Complaint from the Vice Chancery.

Chancellor and Scholars, and they run the like fortune, to be adjudged in Contempt for the like cause. So then there are Writs made returnable in Parliament. And many other examples may be given and some more will be given in this Discourse, and Presidents cited upon other occasions where Writs have been Issued so returnable; Which shall be observed as we go along: And these few shall in this place suffice to disprove that Assertion; Nor indeed was there any thing said on that side, that did not receive a full and satisfactory Answer.

For what was said of an Act of Parliament to give Skinner relief for his Island, doth in truth deserve no Answer, for it were ridiculous to think an Act of Parliament, or any thing else but an Army, could put him into Possession of his Island again; And it would be altogether useless unto him could he so obtaine it, his Plantation there being utterly destroyed, and all

his goods spoiled and lost both there and at Tamby, so as it would be impossible for him to carry on his trade to any advantage; Therefore it is Reparation and Satisfaction for his Damage, which he must have: And that is not the work of an Act of Parliament, but of a Court of Judicature. That advice then is not to be followed, and so we will leave it.

It now remaines but to set forth the Presidents, which the Lords did on their part alledge, with some few more Antient ones, which shall be added for the Vindicating and Asserting of their Right unto this (never before controverted) point of their Judicature, in all Cases of what nature so ever, when some thing extraordinary in those Cases did induce them to exercise it; Of which they were the sole Judges, that being a Trust lodged in them by the very Frame and constitution of the Government.

In

In the black Book in the Tower, which
is Printed by the Name of Placita Par-
liamentaria, 30 E. I. F. 231. is the
case of Sir VVilliam Paynell and
Margaret his wife suing for Dower
upon the Lands of John Cameys, who
had been Margarets former Husband,
and whom she had left He yet living;
And they now desiring to be tryed by their
Country upon the point of Adultery, and
the Lords not allowing of it; This hath
been at large expressed before, therefore I
only mention it now.

In the same Book p. 266. 33. Ed. 1.
The Case of Nicholas Segrave, who
was tryed in Parliament for leaving the
Kings Army then in Scotland, and
goeing over into France to fight with
one John de Crumbwell upon a fal-
ling out between them, they being toge-
ther in the Kings Army: This was a
case not tryable in VWestminster-Hall,
nor punishable in any ordinary Court of
Justice by the Common Law of England,
yet the House of Lords could try him, and

O 4. adjudge

adjudge him worthy of death: And one thing more is observable in that Record, That a Writ is Issued to the Sheriff of the County to take foure Knights with him and in their presence to Summon Segrave, Quod esset Coram Domino Rege in proximo Parliamento suo apud VVestm. ad audiendum voluntatem ipsius Regis, et ad faciendum et recipiendum ulterius quod Curia Domini Regis consideraret in Præmissis: So here is a writ returnable in Parliament, and the Sheriff did accordingly make his returne, that he had Summoned and charged him, Quod esset coram Domino Rege in isto Parliamento nunc juxta formam et Tenorem Mandati prædicti &c. It was therefore a gross mistake to say That never any Writ was made returnable in Parliament, as it was likewise one to say, That the House of Peers could give no remedy, where there was not remedy at Law, this President proving the Contrary to both.

21. Ed. 1. p. 135, 136, &c. The Arch-bishop of York is questioned in Parliament for excommunicating the Bishop of Duresme: The ground of the Excommunication was, For that the Bishop of Duresme had imprisoned two Persons employed by the Arch Bishop to cite the Bishop to appear before him. The Arch Bishop appeals, Et dicit quod de sententia a Canone lata, & per ipsum declarata, in Curia Domini Regis non debet respondere. The House of Lords goes on: The other side alleadging, That the Bishop in his Temporal Capacity, as Count Palatin, had committed those men, and it pertained to the King, and not to the Arch-Bishop to take cognisance of the Imprisonment, if or no it was lawful. The Judgement is, Videtur Dominio Regi in pleno Parlamento, prædictis Comitibus, Baronibus, &c. Quod prædictus Archiepiscopus quantum in ipso fuit, nitebatur usurpare super Coronam & Dignitatem Regiam, &c. Propter quod per Comites, Barones & Justiciarios & omnes alios de Consilio ipsius Domini Regis una-

P nimirer

138 *The Jurisdiction of the*
nimiter concordatum est, quod pra-
dictus Archiepiscopus committatur
Prisonæ pro Offensa & Transgressione
praedictis. Et super hoc ante Judici-
um pronunciatum, (licet unanimiter
de Consilio praedict. Magnatum &
aliorum concordatum fuisse tenen-
dum in hoc Casu & similiter in Cas-
ibus consimilibus in perpetuum) pra-
dictus Archiepiscopus Magnates & a-
lios de Consilio ipsius Domini Regis
rogavit, quod pro eo Dominum Re-
gem requirent, ut ante pronunciati-
onem Judicij ipsum ad gratiam suam
admitteret & voluntatem suam. They
interceded for him, and he made Fine
to the King of 4000 Marks, and was
received to favour. They did not
only give a Judgment in this particu-
lar Case, (which being *contra Coro-
nam & Dignitatem*, was tryable in West-
minster-hall) but they declare it to be
a Standing Rule for the Judging of
all Cases of like nature; which shews
the absoluteness of that Power of Ju-
dicature, which is lodged in that
House.

It was said, That the Lords could not take a Cause to themselves per Saltum, and before it had passed all the formalities below; That a Writ of Error did not lie from the Common Pleas to the Lords House, but must first be brought to the Kings Bench's. And the Case of the Bishop of Norwich was urged, 50 Ed. 3. And it is acknowledged, The Lords would not receive that Bishops Complaint, but sent him away with that Answer, nor could they give him any other: For Writs of Error have their Walk, and their gradual Proceeding chalked our, and settled by several Statutes, and by the Common Law of the Land; But what doth that signify against the Judicature of the House of Peers? No man, saith the Lords, can either take Cognisance of Causes, or judge Causes against the Law of the Land, and take them per saltum, when the Law prohibits it: But they do say and affirm, That by all the Examples and Presidents of former times, it hath been the usage of that House to receive Complaints, and

give remedy in all Cases, where the Law hath not expressly otherwise determined; and if there be any thing in the Case which merits, or requires, and needs something above the ordinary Power and Proceeding of the Inferior Courts of Justice, to administer that Relief which is just and due. As in Cases of difficulty where a Court cannot, or of delay where it will not proceed, the Lords, who have a general inspection into the Administration of the Justice of the Kingdom, and into the Proceedings of all other Courts, have ever, upon Application made to them, assumed to themselves the Cognisance of such Causes.

14. Ed. 3. Sir John Stanton, and his Wife, had passed a Fine of certain Lands to Thomas Cranthon, who reverts them back, and by that means settled them upon the Wife's Sir Jeffry Stanton, as next Heir, brings his Formedon en le descender in the Common Pleas, where (after some Proceedings) upon a Demurrer in Law, Sir Jeffry could not get the Judges to proceed to Judgment;

ment's upon which he Petitions the King in Parliament (which no man will deny to have been in the House of Peers.) They examine the Matter; And afterward order a Writ under the Great Seal containing the whole Matter to be sent to the Judges there, willing them thereby, if the Matter so stood, to proceed to Judgment without delay: They not doing it, an Alias is sent; And the Judges doing nothing then neither, and Sir Jeffrey renewing his Petition's The Lords commanded the Clerk of the Parliament, Sir Thomas de Drayton, to go to Sir John Stoner, and the rest of the Judges of the Common Pleas, and to require them, according to the Plea pleaded, to proceed to Judgment, or else to come into the House with the whole Record, so as in Parliament Judgement might be given for one or the other of the Parties. The Judges come at the day, and the business was heard, and it was adjudged, That Sir Jeffrey should recover; And a Writ under the Great Seal was sent to the Judges to give Judgment accordingly: Here then the King

King in Parliament, (that is the House of Peers) upon a Petition, assumes the Cognisance of a Cause, depending in the Court of Common Pleas; which was so far from having passed all the formalities below (that is to say, an Appeal to the Kings Bench and Chancery) that it was as yet undetermined in the Common Pleas. Nor did it appear unto them upon what ground it was, that the Judges gave not Judgment; So they might have answered Sir Jeffrey Stantons Petition with saying, that they would first see what the Court would determine, and what the Kings Bench afterwards; But they apply themselves to give him relief: And yet no Votes past against that House for so doing, as now hath been in the Case of *Skinner* against this.

So in the Parliament of 13. E. I.
p. 16. of the *Placita Parlamentaria*,
William de Washul complains of Matthew del Exchequer, for cosening him
upon the levying of a Fine before the
Judges of the Common Pleas, by procur-
ring

ring an Attorney to slip in other Lands unknown to Waftbul, and which he intended not to pass in the Fine: This is returned back to those Judges, because the Fine had been levied before them, *Et dictum est iisdem Justiciariis, quod Recordum istud in Rotulis suis faciant irrotulare, & tam super Recordo isto quam super aliis ipsum Matthæum coram eis contingentibus procedant ad Judicium & debitum & festinum faciant Justitie Complementum.* True! the House of Lords is not so bound up to forms, but that it may, when it thinks good, vary, and retain a Cause at one time, which it will not do at any other time. Yet we see they were proper Judges in this Cause, for they order *Waftbul's Complaint*, and the Proceedings before them to be entred, as a Record in the Common Pleas, and those Judges to proceed upon it, which, if they had not had Cognisance of the Matter, had been all *Coram non Judice*, and could have signified nothing.

And I must observe one thing, which I think will not be denied, That

144 *The Jurisdiction of the
all those Placita Parliamentaria*, what-
ever is said to be done *Coram Rege in
Parlamento*, is to be understood of
the House of Peers, where the King
was in those times commonly present,
and alwayes understood to be there
representatively; So as his Name was
ever mentioned in the Proceedings,
even when his Person was absent, be-
ing sometimes out of the Kingdom,
sometimes detained away by sick-
ness, or other occasion; As *5o. E. 3.
n. 35.* it is said, *The King ordains,
That from thenceforth no Woman should
for Maintenance pursue Matters in the
Kings Courts upon pain, &c.* And then
was the King sick at Eltham, and could
not come to Parliament, as appears by
n. 42. and it was only the House of
Peers that made that Order. So in
Judgments, though in Ancient Times
they were mostly entred as given by
the King, yet it was the Lords House,
which was *Curia Regis*, that gave them.

For we must know the KING
hath a double Capacity of sitting
in the House of Peers, a Legislative
Capa-

Capacity, when he hath in himself a Negative Voice to what even both Houses have concluded and done; which signifies nothing without his Assent, and his single Consent makes it all null and void: This is in passing Acts of Parliament, and making of Laws; The other is a Judicial Capacity, when he will please to assent, and be present at the ordinary Transactions of the House, as heretofore was usual; which alters not the Constitution of it as it is a Court, gives it no more Power nor Jurisdiction then it had before, he being then but in a manner as Chief Judge, and not doing anything singly, but according to the Plurality of Opinions: As when the Kings would in Person sit in the Kings Bench, which they have in former times done, (where still all is said to be done *Coram Rege*, though now he never come there) and in Our Memory King James hath set in the Star Chamber; I think no body will say the Star Chamber then, or Kings Bench before, did or could vary from their ordinary



dinary

146 *The Jurisdiction of the
dinary Forms and Rules of Proceed-
ing; No more can the House of Peers
alter their Proceedings, or assume
greater Authority by reason of the
Royal Presence, to take Cognisance
of other Causes, or do any thing
which by the Custome and Usage of
the House, and the Law of Parlia-
ment, it could not else have done:
But their Jurisdiction, and their way
of exercising that Jurisdiction is still
one and the same.* And therefore 26.

*H. 6. n. 52. When the King had given a
Judgment of himself, without the ad-
vice of the Lords, in the Case of Wil-
liam de la Pool Duke of Suffolk, who
stood impeached for Treason, banishing
him the Realm for five years; The
Lords entred their Protestation against
it, as not done by their Assent, and si-
na Act of the House.* And 5. H. 4.
*n. 11. The Earl of Northumberland
coming into the Parliament before
the King and Lords, and by Petition
acknowledging to have done contrary
to his Allegiance, in giving of Live-
ries, and gathering of Power, for
ymanib which*

which he prayed pardon, in regard he yeelded himself, and came in to the King at York upon his Letters; And the King delivering this Petition to the Justices to be considered, The Lords made their Protestation, *That the Judgment appertained only to them:* And therefore as Peers of Parliament, to whom such Judgement belonged, in weighing the Statutes concerning Treasons, and concerning Liveries, they adjudged the Fact of the said Earl to be no Treason nor Fellony, but only a Trespass finable to the King: Whereupon the King received him into Grace, and pardoned him his Fine. All Power of Judicature in Parliament is then questionless in the House of Lords, where the King alwayes is Personally or Virtually, and the Judgment proceeds from them by the Authority and in the Name of the King: For the Power of Judicature in Parliament is lodged in them, together with the King, as is declared *I. H. 4. n. 80.* where it is laid, *That the Commons were only Petitioners, and that all Judgments*

148 *The Jurisdiction of the
appertain to the King and the Lords,
unless it were in Statutes, Grants, Sub-
sidies, and such like.* This hath ever
been the Practice, and Custom, and
Law of Parliament, since there have
been Parliaments, and when this shall
cease to be, the Ancient way of Free
Parliaments will cease likewise.

1. R. 2. n. 30. Sir John de Cobham
sheweth, That by the delivery of a Ring
of Gold for seisin to Edward the third,
he had settled the Reversion of several
Mannors there named in the Crown, and
now prayes it may so remain according
to his Intention, divers' Lords are ex-
amined, the Judges Opinions are asked,
who declare it to be a good Livery and
Seisin: And so it is settled.

N. 32. William Fitzhugh, a Gold-
finer and Citizen of London, exhibits a
Bill of Complaint in the Name of the
Comonalty of that Mystery, against John
Chichester and John Bolsham of the
same Mystery, for divers Oppressions
done by them; The Lords send for them,
examine them, they deny those Oppressi-
ons; And Fitzhugh refusing then to a-

now his Bill, the Lords commit him to the Tower.

N. 35. Robert Hawley and John Shakell, are by the Lords sent to the Tower for refusing to bring forth a Spanish Prisoner taken in Battle, whom they had in their keeping, and others laid claim to.

N. 41. Alice Perrers ^W Pierce, who had been much in favour with Ed. 3. is questioned in the Lords House, Sir Richard Scroope Lord Steward of the Household managing the Tryal, for that contrary to an Order made by the King and Lords, 50. Ed. 3. n. 35. That no Woman, and she by Name, should pursue any Matters by way of Maintenance, upon Pain of perpetual Banishment, and loss of the whole Estates. She notwithstanding had persuaded King Edward to counterman Sir Nicholas Dagworth from going into Ireland, when he had been ordained by the Council to go thither for urgent business, which would have been profitable for the King and the Realm; And an other Charge against her was, for persuading the King

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to pardon Richard Lyons, who had been
Farmer of the Customs, and for abuses
and extortions had been censured in Par-
liament to forfeit his Estate, and be com-
mitted to Prison; She got all to be remit-
ted, and his Estate to be restored unto
him, even that part of it which the King
had given to two of his own Sons for
their lives? The bearing of this Cause
took up several dayes; Many that had
been Counsellors and Officers to the late
King were examined as Witnesses. At
last she is found guilty, and Judgment
of Banishment and loss of Estate given
upon her.*

3. R. 2. n. 24. *The Case of the Ear-
of Pembroke, and William le Zouch,
complaining of Thomas Roos for sue-
ing them concerning Lands in York-
shire, and endeavouring to get a Tryal
in the Countrey, (the Record is, Desiran
D'estre a L'issye du pays trop suspe-
cieusement, his desiring it being su-
spicious) so they pray, Que Ils par tem-
Malueis Compassements & Procure-
ments en pais ne soient desheritez
That they may not loose their Inheritanc*

by such wicked practises and procurements; The Lords upon this retain the Cause, appoint some Persons to examine and report it; But this President hath been cited before at large, so I do but touch it here.

N. 22. Sir Philip Darcy complains, That the Prior of St. Johns of Hierusalem sues him in Chancery for the Manors of Temple-hurst and Temple-newsom, which Ed. 3. had granted to John Darcy his Father, and produces a Deed shewing that the Priors Predecessor had passed the Fee of them to Ed.

2. The Lords order that Deed to be sent to the Treasurer and Barons of the Exchequer, to examine the Kings Title, and in the mean time stop Proceedings in Chancery. This is more then taking Cognisance of a Matter Originally, for they take it out of one Court, where it depended and was undetermined, and send it to be examined in an other Court, which shews the Ascendant they had upon all other Courts.

- 314. R. 2. n. 17. Sir Ralph de Fer-
riers had been seized by the Duke of
Lancaster upon the Marches of Scotland
upon suspicion of Treason, for holding
Intelligence with the French the Kings
Enemies, upon some Letters of his to
several French Lords found and taken
up by a Beggar. He was brought into
Parliament before the Lords, and put
to his Answer. He first desired Coun-
sel; then offered the Combate against any
that would accuse him, but were denied
him. Then he applyed himself to his
Answers. And after several daies hear-
ing, the Lords still remanding him to
Prison; he so well defended himself,
That the Lords suspected the Letters to
be forged, and therefore committed the
Beggar, and bayled Sir Ralph, deliver-
ing him to his Manucaptors.

5. R. 2. n. 45. The Chancellor and
University of Cambridge, Petition a-
gainst the Major Bayliff and Commonal-
ty of the Town, for breaking up their
Treasury, burning their Charter, and
by force compelling them to make Re-
leases of some Actions they had brought
against

against the Town, and enter into Bonds to them for great Summs. The Lords direct a Writ to issue out to the Major and Bayliffs to appear in Person, and the Commonalty by Attorney. They appear, The Chancellor exhibits Articles against them. They being asked why their Liberties should not be seized, plead to the Jurisdiction, that the Court ought not to have cognisance of them: They are told, Judgment should be given, if they would not answer: Then they answer, and the business is heard. The Townsmen are ordered to deliver up those Deeds forced from the University, which are presently cancelled: The Town Liberties are seized into the Kings hands, and part of them granted to the University: Some are granted back to the Town, for which they were to pay an increase of Rent. Note, here is a Plea to the Jurisdiction, and that Plea Overruled.

8. R. 2. n. 12. *The Earl of Oxford complains of Walter Sibell of London for a Slander, in having to the Duke of Lancaster and other Noble-men accused him of Maintenance, The Lords bear the business,*

R

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business, Commit Sibell to Prison, and
give 500 Marks damages to the Earl.*

9.R.2. n.13. *The Case of the Duke of
Lancaster complaining, That Sir John
Stanley had entred upon the Mannor of
Latham which held of him, and had not
sued out his Livery in his Court of Chan-
cery. The Lords order him to sue out his
Livery. But this hath been already
mentioned.*

15.R.2.n.16. *The Prior of Holland
in Lancashire complains of a Riot com-
mitted by Henry Trebble, John Green-
bow and others, and of an Entry made
by them into the Parsonage of Whitwick
in Leicestershire. John Ellingham the
Serjeant at Arms is sent for them, who
brings them into the Parliament: The
Lords commit them to the Fleet.*

N. 17. *The Abbot of St. Oseches
complaineth of John Rokell for Embrac-
cery. This Case hath been already
cited.*

N. 18. *Sir William Bryan had pro-
cured a Bull directed to the two Arch-
bishops, to excommunicate some that had
broken up his House and carried away
Writings,*

Writings. This was read in Parliament, and adjudged to be prejudicial to the King, and to be in Derogation of the Laws; for which he is committed to the Tower.

N. 20. Thomas Harding accuseth Sir John Sutton and Sir Richard Sutton, and layeth to their charge, that by their Conspiracy he had been kept Prisoner in the Fleet: Upon hearing of both Parties, for that the two Knights were known to be men of good Fame, The Lords adjudge him to the Fleet.

N. 21. John Shadwell complains against the Archbishop of Canterbury for excommunicating him and his Neighbors wrongfully, for a Temporal Cause appertaining to the Crown and to the Laws of the Land: The Lords bear the business, find the Suggestions untrue, and commit him to the Fleet.

I H. 4. n. 93. Sir William Richill one of the Justices of the Common-Pleas (who by express Order of R. 2. went to Calais and took the Examination and Confession of the Duke of Gloucester, after murdered by Hall) was brought a Prisoner

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Soner into the Lords House, the King pre-
sent, and by Sir Walter Clopton Chief
Justice apposed: And answered so fully,
shewing his sincere dealing, that the Lords
one by one declared him innocent: And
Sir Walter Clopton pronounced him
such.

4 H. 4. n. 21. The Case of Ponting-
don and Sir Philip Courtney, where the
Lords direct the Tryal, appointing what
the Issue shall be: and what kind of Ju-
ry shall be impannelled to prevent Sir
Philip's practices in the Country: It hath
been cited before at large.

1. E. 4. m. 6. n. 16. The Tenants of the
Mannor of East-Maine belonging to the
Bishop of Winchester, the King being in
his Progress in Hampshire in the Sum-
mer-time, complained to him of their Bis-
hop for raising new Customs among them,
and not suffering them to enjoy their Old
ones: The King bids them come to Par-
liament in Winter, and they should be re-
lieved: They come, and the King recom-
mends their business to the Lords: They
commit it to certain Justices to examine,
Upon their Report, and upon mature De-
liberation,

liberation, it was adjudged, That the Tenants were in fault, That they complained without cause, and they were ordered to continue their said Customs and Services. Here observe, there was the recommendation of the King in the Case, just as now in *Skinner's*, and this difference, that a question of Custom betwixt Lord and Tenants was properly determinable by the Common Law, and a Jury of the Visenage, and this of a Trespass in the Indies, to be punished in Parliament, or nowhere: which justifies the Proceedings there.

43. Eliz. the 18th of December, A Complaint was made to the Lords by the Company of Painters against the Company of Plaisterers, for wrong done them in using some part of their Trade. Their Lordships referred it to the Lord Maior and Recorder of London, to be heard, examined, adjudged, and ordered by them: Which was all one as if they had done it themselves: For it was done by their Authority and by their Order: *Qui facit per alium, facit per se.* R 3. 18 Jac.

18. Jac. *The Lords took notice of the Proceeding of the House of Commons in the Case of one Flood, whom they had convicted before them for insolent and scandalous words spoken by him against the Prince and Prince's Palatine, examined Witnesses, and given Judgment in the Cause; which they look'd upon as deeply trenching upon the Privileges of their House, all Judgments properly and solely belonging to them. Thereupon they sent a Message to the House of Commons and desired a Conference; At which Conference the Commons confessed, That out of their Zeal they had censured Flood; But they left him now to their Lordships, and hoped their Lordships would censure him; In order to which they sent up a Trunk of Writings concerning his Case: Then the Lords proceeded to the bearing of it, examined several Witnesses, and heard all Flood could say for himself; which done, they adjudged him, Not to bear longer the Arms of a Gentleman, To ride with his face to the Horse tayl, to stand upon the Pillory with his Ears nailed, to be whipped at a Carts tayl,*

to be fined Five thousand pounds, and to be imprisoned in Newgate during life.

21. Jac. Thomas Morley was convicted before the Lords, for delivering a Scandalous Petition to the House of Commons (as himself affirmed) against the Lord-Keeper Coventry. Upon examination it appeared, that it had not been presented to the House of Commons, only to their Committee of Grievances, & that he had published very many Copies of it, even since his being convicted before their Lordships, They adjudge him to be imprisoned in the Fleet, to pay 1000 l. Fine, to stand with his neck in the Pillory, to make his Submission and Acknowledgment at the Barr.

22 Jac. Mary Brocas petitioned the Lords to be relieved for a Debt of 1000 l. due unto her by Bond from the Muscovia Company. upon bearing both sides, their Lordships order the Company to pay the Debt, with 5 l. per cent. Interest, out of the Leviations, which the said Company had made among themselves for the payment of their Debts.

¶ The same Parliament, May 28. Thomas

*mas Pynckney petitions the House in
the behalf of himself and other Creditors
of Sir John Kennedy, to be relieved for
Debts owing to them from Sir John, by
the sale of Barn-Elms, Lands in the pos-
session of his Heir John Kennedy. The
Lords, upon examination of the business,
find cause, and so they order it, That Barn
Elms should be sold to the best value, and
the Profits to be sequestred in the mean
time into indifferent hands ; And that a
Recognizance of 2000 l. in which Pinck-
ney stood bound in Chancery should be
withdrawn and cancelled.*

*The same Parliament again, Grizell
Rogers Widow, petitions the Lords for
the settling her Title to certain Lands in
Heygrove in the County of Somerset,
and for quieting and ending divers Suits
and Differences between her and Sir Ar-
thur Ingram, Sir William Whitmore,
Ec. They order her Satisfaction out of
particular Lands, And all Suits to cease
between them, And appointed Releases
of all differences on both sides to be drawn
and sealed.*

4. Car. 31. Jan. The Lords Committee for Petitions make report to the House of a Petition of Benjamin Crokey against John Smith, in behalf of a Grammar-School at Wotton-Under-edge in the County of Gloucester, which School was endowed with great Possessions by the Widow of the Lord Berkly in Richard the 2^{ds} time, which were now much abated and brought to an under-value by the cunning practices of the said Smith. Upon which the Lords awarded a Commission to issue out of the Chancery, to survey all the said Lands; And ordered also a special Habeas Corpus to be directed to the Warden of the Fleet (where Crokey was a Prisoner) to bring the Body of the said Crokey before the Lord-Keeper, to the intent he might attend the said Commission; And ordered further, That if Crokey did make it appear the value of the Lands to be so as be said, and that to be approved by the Lords Committees for Petitions, then Smith to repay to the said Crokey such Charges as he shall disburse in the Prosecution.

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In the Parliament of 1640, Decemb.

16. *Upon report from the Lords Committees for Petitions, That Misstris James complained against Sir Edmond Sawyer for sheltring himself under a Royal Protection which he had procured, by which means she could not sue him upon a Bond of 500 l. for so much Money borrowed of her, and two years Interest, and so was debarred from helping her self by any Legal course; The Lords ordered, that the said Mrs James should proceed against the said Sir Edmond Sawyer for the recovering of her Debt in any Court, where she thought best, notwithstanding his Protection.*

December 21. The Lords Committees report a Petition of Katherine Hadley, complaining that she had been kept a long time a Prisoner in the Common-Gaol in the Old Bridewell, without any cause shewn; the Lords ordered her Release.

The 22th of Decemb. upon a Report from the Lords Committees of Sir Robert Howard's Case, complaining, that he had been committed Close-Prisoner

to the Fleet by the High-Commission Court, and kept there three months, till he was fain for his enlargement to enter into several Bonds with Sureties in the sum of 3500 l. For which he desired Reparations, and his Bonds to be cancelled; The parties interessed were summoned and heard. And after due consideration, the Lords ordered a thousand pound damages to Sir Robert Howard, of which 500 l. to be paid by the Archbbishop of Canterbury, 250 l. by Sir Hen. Martin, and 250 l. by Sir John Lambe, the Bonds to be forthwith cancelled, and delivered to Sir Robert Howard.

The 23d of Decemb. They reported the Case of William Dudley, that he having arrested the Lord Wentworth (son to the Earl of Cleveland) for a Debt of 400 l. entred a Caution in Mr. Justice Bartley's Chamber for good Bayl to be taken, yet Justice Bartley had released the said Lo. Wentworth upon such Bayl, as the said Dudley was utterly disabled to reeover his debt. Justice Bartley being called, made no good Answer thereto. The Lords thereupon order, that

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the said Justice Bertley should forthwith
assure unto the said Dudley his House
and Land near Barnet, for securing the
said Debt with Interest and Damages.

The same day they report likewise the
Case of Mrs Mary Stanhope Widow,
Daughter-in-law to the Earl of Chester-
field, complaining, that the said Earl
refused to assure unto her 40 l. per An-
num during her Widowhood, according to
a former Agreement made between them,
which appeared to be true by a Letter
produced under the Earl's hand; And
his Counsel being heard, and no good
cause shewn why the Petitioner should not
be relieved: The Lords ordered the Earl
of Chesterfield forthwith to assure to the
said Mrs Mary Stanhope, his Daugh-
ter-in-law, 40 l. per Annum during her
Widowhood, and to pay unto her such
money as was in arrear of the 40 l. per
Annum due to her for the space of two
years.

The 30th of December, the Lord
Committees for examining Abuses in
Courts of Justice, report the Complain-
t of John Turner, a Prisoner in the Gate

houle, committed thither by the High-Commission Court, where he had lain fourteen years, for refusing to take the Oath Ex Officio : The Lords ordered him to be forthwith released.

The 21th of January, the Committee for Petitions, report the Complaint of William Waters, and Thomas Waters, How they had suffered much by an untrue and false Certificate, made by Dr. Clerk and Dr. Sibthorp unto the Counsel-Table, for their refusing to pay Ship-money; whereby they were forced to pay the sum of 34 l. for Fees: Upon which Dr. Clerk and Dr. Sibthorp were heard at large: The Lords ordered them to pay back the 34 l. to the Complainants, which they had paid for Fees, and 100 l. Damages, and to be turned out of the Commission of the Peace.

The 22th of January, the Committee for Courts of Justice reported the Complaint of the Lady Frances Weld Widow, against the Archbishop of Canterbury and Mr. Dell, suggesting, That she had been much prejudiced by them in the recovering of a Debt of 1300 l. due to

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to her upon Bond from Mr. Child: Upon
bearing of all Parties, the Lords find the
Archbp. and Mr. Dell free from blame,
and order them to be discharged concerning
that business.*

*The 5th of February, the Committee
reports the Complaint of Jeremy Powel,
That the Bishop of Hereford had admitted
a Clerk to the Vicarage of Burkhill
in Shropshire, though the said Powel in
the Right of himself and of Mary his
Wife, had caused a Ne Admittas to be
directed to the Bishop. The Lords upon
bearing the business, found, that the Bi-
shop had done contrary to Law, and there-
upon ordered him to pay unto Powel, by
way of Damages, the sum of 30 l. And
the said Powel, as Patron, to be left in
the same condition for tryal of his Right,
as he was before the Bishop had put a stop
to his business.*

*The 9th of Febr. the Committee for
Courts of Justice reports the Case of Ni-
cholas Bloxam, That Andrew Sande-
land Clerk had procured a Sentence a-
gainst him in the High-Commission Court,
by vertue whereof the said Sandeland
had*

bad violently gained from him the possession of the Rectory of Great Waldingfield in the County of Suffolk. The Lords judging this proceeding of the High-Commission to be most injurious and contrary to Law, ordered, That the Cause should be left to a tryal at Law at the next Assizes for that County; That Sandeland should appear gratis, and plead, Not guilty, that so the Cause might come to a final Determination that Assizes.

The same day the same Committee report, That John Radway, William Newark, and Walter Cootes were presented Ex officio mero in the Ecclesiastical Court of Gloucester, and afterwards Excommunicated for going to Church out of their own Parish, and upon pretence of a Significavit which was imperfect, were arrested and cast into Prison, where they continued Eleven dayes, whereas there was no Writ justly taken out. The Lords Ordered that Dr. Baber Chancellor of Gloucester should pay to those three persons 40 l. for Damages, and the Undersheriffs Deputy Richard Byford

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Byford 20 l. upon the account of the
Arrest.

The 23d of Febr. the same Committee report, That Abraham Hill, a poor aged man, was committed to Prison in the year 1636, by Robert Buxton then Mayor of Colchester, by verbal command only, without any Warrant, or Cause shewed, and continued a Prisoner sixteen weeks, to his utter undoing: The Lords Ordered, that the said Buxton should pay unto him 16 l. by way of damages.

The 5th of March, the Committee for Petitions inform the House, that Complaint had been made before them, That Nicholas Haws Gent. an antient man, had not yet sued out his Livery in the Court of wards, the Lords order him to do it without delay.

The 11th of March, the Committee for Petitions gives account to the House, that according to their Lordships direction, there had been a Tryal at the last Assizes for Suffolk, between Bloxam and Sandeland, and that the Verdict had passed for Bloxam; whereupon the Lords Order,

Order, That Bloxam should discharge the Cure as Lawful Incumbrant, and that Sandeland should deliver unto him the quiet Possession of it. It is worthy Observation, That the Lords, after they had referred the Decision of the Title for Matter of Fact, as to the forcible Entry to the Common Law, remained still Judges of the Cause, and their Judgement settled the Possession.

The second of April, 1641. The Committee Reports, That Lambert Osholstone Clerk, had complained of a Sentence in the Star-Chamber, by which he was degraded, and deprived of all his Spiritual Livings and Preferments, being a Prebend of Westminster, and Parson of Wethamsted, Fined in 1000 ls to the King, and adjudged to pay the like Sum for damages to the Archibishop of Canterbury, and to be Imprisoned; The Lords Order, That he shall be freed and discharged of his Fine, Damages and Imprisonment, and be restored to his Prebendary and Parsonage.

The Sixth of April, 41. The Committee Reports, That the Lady Dyer had made her Complaint, that, primo Caroli, she had done Sir Richard Tiebburn 400 L. upon Bond, and sued it to a Judgment; but Sir Robert Pye, Mr. Burdon, and others had contended all the Lands byable to that Judgement at a far under value, to deprive her of all the benefit of it. The Lord's Order. That Counsel of both sides should agree to draw up Assurances for settling the payment of all the Parties upon the Judgment and Patent, to be all Signed and Sealed by them, and that the Lady Dyer should be first satisfied, and enjoy the Lands till then. One thing by the way is to be noted, That Sir Robert Pye was then a Member of the House of Commons.

The twelfth of April, 41. The Committee Reports a Complaint of Dr. Walker. That Sir John Lamb had unjustly taken from him his Offices of Commissary of Leicester, and of Official to the Archdeaconry there, which he enjoyed by Patent for life. That now Sir John

John Lamb took the Profits of them to himself, And had forced him by many Menaces and Oppressions to release all Suits and Actions to his utter ruine and undoing, and to his Loss and Dammage of above 1500 l. The Lords Order, That Sir John Lamb should pay unto the said Dr. Walker, by way of Damages, the sum of 1500 l. to be levied upon his Lands and Chattels, should be brought to the Bar as a Delinquent, and there receive a Reprobation.

The twelfth of June, 41. The Committee Reports a Complaint of Edward Bagshaw, his Brother Henry, and Sisters Mary and Margaret, against their Brother Thomas, concerning Portions and Annuities given them by their Fathers Will: That all Parties have been heard, and their Witnesses, Upon hearing the State of the Matter, The Lords Order Thomas to put in Security within four dayes for the payment of the Portions according to the Will; And to give security by Land for the paying of an Annuity of 20 l. per annum to Edward for term of his life: That then the

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said Edward shall release by a Fine to
the said Thomas, all his Estate, Right,
Title and Interest in the Lands and Goods
of his Father deceased: And that a Sta-
tute of 1600 l. entred into by the said
Thomas Bagshaw to John Gell Esq; shall
be discharged and made void: And
that Thomas Bagshaw shall make a Re-
lease to the said Edward of all Debts
and Demands.

The sixteenth of June, 41. The Lord
Audley Complains by Petition, That the
Lord Cottington kept from him the
Mannor of Fonchill, and prayed Re-
lief therein: Upon hearing Counsel an
both sides, the Lords dismissed the Peti-
tion.

The twenty third of June, 41. The
Committee for Petitions Report, That
Misstris Walter had preferred a Petition
setting forth, That William Walter her
Husband will not permit her to cohabit
and dwell with him, nor allow to her and
three Children any thing for their sup-
port. The Lords Order her to repair to
her Husband, and offer to live with him,
and if he shall refuse to admit her, that

then

then he shall allow her 80*l.* per annum,
for her Maintenance.

The 23*rd* of July 1711 A Petition was
exhibited before the Lords by sundry
Officers and Clerks of the Court of Com-
mon Pleas, shewing, That the disposing
of the Offices of Prothonotaries, Phi-
litzers, Exigenters, and other Offices of
the said Court, had time out of mind be-
longed to the Chief Justice of that Court
for the time being, but several Grants
and Patents had been obtained from his
Majesty for the disposing of the said
Offices, and therefore they prayed, That
all those Grants, and Letters Patents
might be recalled, The Lords heard Coun-
sel upon it, and after mature deliberation
declared, That the said Offices do of
Right belong to the disposition of the
Lord Chief Justice of the Common Pleas.
And the Grants formerly made by Let-
ters Patents of the said Offices to be Il-
legal, and void, And Ordered the said
Patents to be brought into the House.

There is likewise in the Journal Book
of that Parliament, mention made of a
Petition of one Thomas Smithick, pre-
ferred

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The Jurisdiction of the
ferred the tenth of Juttie, 1641. Com-
plaining of wrongs sustained from the
East India Company, and likewise of a
Petition from the East India Company,
full of Respect and Submission to the
House of Lords, and praying a longer
day (then it seems was appointed) for
bearing the Merits of the Cause, which
the Lords granted, and Ordered all such
Books, Certificates, and Writings as
were in the Custody of the Company con-
cerning that business, should be produced,
and Smithick to peruse and take Copies
of them. What was more done upon
this Petition of Smithicks, appears
not by the Journal Book, probable
they compounded the business among
themselves. But however it is obser-
vable the different Spirits of the East
India Company then and of this now,
The Modesty of that, and the Carr-
age of this so far differing. In those
times no question was made of the
Power of the Lords in point of their
Judicature, nor no Complaint against
their practice of it. Yet we see the
frequency of it, in Causes of all Na-
tures

ters, Criminal, Civil, Mixt, between King and Subject, between Subject and Subject's no Protection, no Priviledge did exempt any body from their Jurisdiction.

The Lords at the Conference (as they said to the Gentlemen of the House of Commons) were the more Copious in the enumeration of these later Presidents, especially those of 1640, and 1641. not that they thought themselves at all to stand in need of them, the antient ones before produced shewing the usage all along from the very first and best times, which in their Lordships Opinions were of much more weight, & sufficiently convincing; but the House of Commons having a little before at an other Conference delivered it for a Maxim, *That the later Presidents were best*, and having accordingly insisted upon one single President of the same Parliament of 1640. to oblige the House of Lords to commit a person upon a general Impeachment of Treason, without special Matter shewn.

shewn, and supposing that one President to what their Lordships alledged to the contrary, and made appear to have been the usage of all former times; no Record being of any Man ever sent to Prison by the House of Peers without a particular Crime expressed in the Impeachment of some Act done by him, before the Earl of Strafford, which was as the President stood upon it. This made the Lords heap up many Examples of the Proceedings of their House in that Parliament of 1641 & 1642 in the point of Judicature, to use it, as Argumentum ad huiusmodi, and what the House of Commons could alwayes except against, themselves having declared it to be of greatest Authority.

Until Henry the Eighth time, the very House of Commons was to be beholding to the House of Lords for their Administration of Justice even concerning their Members, as the only Judges and Conservators of their Liberties and Priviledges. Them selves could not before that have pur-

nished

nished any one, that had never so much offended them : So far were they from exercising a Power of Commitment, or of inflicting any punishment for Crimes at large and against the Laws of the Land, where neither the Offence nor the Offender had particular relation to their House, as in these later times hath been often practised by them. But (as I say) the first time that ever they punished any, (and it was for breach of Priviledge) was in the Parliament 34 H.8. in the Case of George Ferrers, Burgess for Plymouth, who was arrested and put in the Counter ; The House informed of it, sent their Serjeant to demand their Member (not so much as to summon Sheriff, or Bayliff that made the Arrest, or Party at whose suit it was made, and less to bring any of them as Delinquents to the Bar, as now a dayes) nor could they obtain that ; But their Serjeant coming to the Counter, found resistance, the top of his Mace was broken off, his Man knocked down, and he glad to get off without the Prisoners ; So back he comes to the House yet

sitting, and makes his Complaint : They presently all rise with their Speaker, come up to the House of Lords, and the Speaker makes the Complaint to Sir Thomas Audley Lord Chancellor sitting on the Wooll-sack. The Lords judge the Contempt to be very great, and refer the punishment of it to the Order of the House of Commons. Then indeed they return to their House, and send for the Sheriff of London, the Clerks of the Counter, all the Officers there that had a part in the fray with their Serjeant, one White at whose Suite Ferrers was Arrested, and the Bayliffs that did Arrest him, all to appear personally before them at eight of the Clock next Morning : and when they came, they sent some of them to the Tower, some to Newgate, where they continued till they were delivered at the suite of the Lord Major.

We do not find that before this the House of Commons committed any body, no not for the Breach of their Priviledges : nor were themselves so much as Judges of the Elections of their Members, but were fain to come

up to the Lords, and pray their aid to redress what was amiss; and punish those that had offended : All the Presidents shew it so to have been, and not one, no not one to the contrary.

5. H. 4. n. 74. *The Commons Petition, That all such Persons as shall Arrest any Knight or Burges of the Commons, or any of their Servants, and know them so to be, do Fine at the Kings Will, and render treble Damages to the Party grieved.* The Answer is, There is sufficient remedy for the Cause ; Which remedy it seems was, *That the King and Lords would set them at Liberty,* which was as they conceived sufficient. For,

8. H. 6. n. 57. *Among the Petitions of the Commons, one is, That William Lake Servant to William Mildred Burges for London, was Arrested and carried to the Fleet upon an Execution, and they pray he may be delivered according to the Priviledge of their House.* It is granted, but withal, *Authority is given to the Chancellor, to commissionate Persons to apprehend him again after the Parliament.*

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39. H. 6. n. 9. *The Commons complain by Petition to the King and Lords, That Walter Clerck one of their Members, Burgess for Chippenham in Wilts, had been Outlawed, and put in Prison, and pray, That by the Assent of the King and Lords he may be released; Which was granted, and their Member set at Liberty.*

14. E. 4. n. 55. *The Commons among their Petitions bring up one of a Member of theirs William Hide Burgess likewise for Chippenham, being taken in Execution for Debt, and a Prisoner in the Kings Bench, praying he may be delivered by a Writ of Priviledge out of the Chancery, the which is granted, with this saving, That his Creditors may resume their Execution after the Parliament.*

17. E. 4. n. 36. *At the Petition also of the Commons, the King with the Assent of the Lords Spiritual and Temporal grants, That John at Will Burgess for Exeter condemned in the Exchequer during the Parliament upon eight several Informations, at the Sute of John Taylor*

Taylor of the same Town, shall have as many Supersedas therefore as he will, until his coming home after the Parliament.

One memorable Case of this Nature must not be omitted, which happened 31. H. 6. n. 25, 26. &c. Thomas Thorp Chief Baron was Speaker of the House of Commons, and in an Interval of Parliament) the Parliament being upon a Prorogation,) he had been Arrested, and carried to Prison at the Duke of York's Suite, who had got a Judgement against him in the Exchequer upon an Action of Trespass, for carrying away the Dukes Goods from Durham-House; The Parliament meeting, the House of Commons send up some of their Members to make Complaint to the King and Lords, That their Speaker was a Prisoner, and desire his Release. The Duke of York gives the Lords an account of the business. They ask the Judges Opinion in the Point; The Judges Answer was in these words, It hath not been used before time, nor becomes it us, to determine matters concerning the High Court
of

182 The Jurisdiction of the
of Parliament, which is so high and
mighty in its Nature, that it is Judge of
the Law, and makes that to be Law,
which is not Law, and that to be no Law,
which is : And the Determination of its
Priviledges belongs to the Lords in Par-
liament, and not to Justices : But to de-
clare the Use in Lower Courts, they said,
That as Writs of Supersedens of Privi-
ledge of Parliament were brought unto
them concerning any particular Member
of Parliament, who had been Arrested,
so it were not for Treason, Felony, Sute-
ty of the Peace, or for a Condemnation
before Parliament, they did always re-
lease him, that he might freely attend
the Parliament : After which Answer
made, It was by the Lords Spiritual and
Temporal agreed, assented and concluded,
That the said Thorp should remain in
Prison notwithstanding his being Speaker
of the House of Commons, or any other
Priviledge of Parliament. And they
Ordered the same to be declared unto
them, that were come from the Commons
by Walter Moyle a Serjeant at Law, be-
cause it was Matter of Law : but in the

pre-

presence of the Bishop of Ely, and many other Lords; And then the Bishop of Ely was to charge them in the Kings Name to chuse an other Speaker: This was accordingly performed: And the House of Commons did chuse an other Speaker (Sir Thomas Charleton) in the place of Thomas Thorp, and sent some Members to acquaint the Lords with it; and the Lord Chancellor answered, The King likes him well; It is to be noted, That the King lay then sick at Windsor, and yet all is done in the Kings Name, as if he had been present.

These Presidents shew, That the House of Commons did not in those times exercise any Jurisdiction, nor themselves lay any punishment upon those that broke their Priviledges, and that the Sheriffs and Bayliffs of London in that Parliament of 34. H. 8. were the first, who felt any effects of their Justice in that kind. Nor after that, did they constantly put that Power in Execution, and for some time it seems they absolutely waved it;

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it; For the very next year, the 35th
of H.8. One Trewinnard a Burgess for
Cornewall had been imprisoned at the
suite of one Skewis, and was delivered
only by a Writ of Priviledge, (But
Skewis not sent for by the Serjeant at
Arms to be committed and punished by
the House, as the use is now) So far
from that, That the Executors of Skewis
in the Trinity term of the 36th of H. 8.
brought their Action of Debt against
Chamond the Sheriff of Cornewall for
the Escape, but were cast in their Sute,
and the Priviledge allowed, as Dyer
mentions it in his Reports, p. 59. And
in the 18th of Queen Elizabeth, a Ser-
vant of one Mr. Hall a Member of the
House being Arrested upon Complaint
made to the House, it was referred to a
Committee to consider of the Business, and
how he should be released, who made their
Report, That it could be only by a Writ
of Priviledge, as appears by the Jour-
nal of that Parliament.*

And there is some reason to believe,
That they never or very rarely sent
for by their Serjeant, or medled with
the

the Persons of such as broke their Priviledges by arresting or misusing their Servants and Attendants, till 43.
Eliz. For I find in a Journal of that Parliament (which I have by me) That a Complaint being made to the House, How a Servant of one Mr. Cooke, a Member of the House, was arrested, that President was urged of the 34th of H. 8. And it was said, that the House had committed the Sheriffs of London and the Bayliffs, for abusing their Serjeant, and for arresting of Ferrers: Whereupon it was then resolved and ordered, That the Serjeant attending the House should go to Newgate, and bring away both the Prisoner and his Keeper; and likewise command the Bayliff who made the Arrest, and the Person at whose suit it was made, to appear before the House. This was done, the Prisoner discharged, and the Bayliff, and he who procured the Arrest, brought to the Bar, and upon their humble submission pardoned, with a check from the Speaker, and paying their Fees. Three Presidents only there are, which Sir Edward Cooke produces, of their

186 *The Jurisdiction of the*
exercising a Judicature, two of them
upon their own Members for Miscal-
riages; & the third upon one no Mem-
*ber for striking a Member, this *primo**
**Mariae*, the other 8. *Eliz.* & 23. But*
they did not constantly nor fre-
quently do that neither, that is, not
judge and punish either their own
Members for any Offence, whether a-
gainst the House or out of the House,
or any other for arresting or assaulting
*them, till after Queen *Elizabeth's* time.*
For in the 27th of her Reign, as ap-
pears by the Journal of that Parlia-
*ment, *A Member of the House having**
been served with a Sub-pœna, the House
sent to the Lord Keeper, and signified
unto him, That it was against their Pri-
viledge. The Lord Keeper returned an-
swer, That he should not submit to any
Opinion of the House concerning their
Priviledges, except those Priviledges
were allowed in Chancery, and would
not recal the Sub-pœna.

So in Matters of Elections, they
were glad to pray the aid of the House
of Peers upon any Miscarriage or
Neg.

Neglect of the Sheriffs; as in the 18th H. 6. n. 18. The Sheriff of Cambridgshire (Gilbert Hare) had made no return of the Knights for the County: upon Complaint made to the House of Peers, it was Ordered, That he should go to a New Election, and make Proclamation, That no Person should come armed thereto.

Any of the Members to be dispensed of their Attendance in the House, come to the King and Lords for it. So did Sir Philip Courtney Knight for Devonshire 16. R. 2. n. 6. who being accused of some bainous Matter, comes to the King in Parliament, (for the King did then ordinarily sit in Person in the House of Peers) and prayes to be discharged his Attendance, until he was purged, which was granted; This was upon the Wednesday, and the Monday after at the Request of the Commons, he is restored to his place in their House, and to his good Name, for that he had submitted himself to reasonable Arbitrement, saith the Record.

All this is said with great Respect to
X 2 the

the House of Commons, and not any
wayes to impugn or question their ex-
ercise of Jurisdiction upon their Mem-
bers; and for the defence of their Pri-
viledges, but only to shew how things
were in the beginning, and how ex-
tensive the Power of the House of
Peers hath ever been in their Judica-
ture, reaching all Crimes, all Persons,
all Places, none exempt: And how
necessary it is, it should be so, That
there be not a failer of Justice in the
Land, that no Offender may escape
unpunished, and no oppressed Person
go unrelieved: All other Courts ha-
ving their Bounds and Limits, which
make them too narrow for some Ca-
ses: And this trust being in the House
of Peers, there is remedy in those ex-
traordinary Cases.

But before I wind up all to a Con-
clusion, a word must be said to answer
some Objections, which I have met
with in a Book intituled the *Commo-*
ners Liberty, printed in the year 1648.
The first Objection is an Order of the
House of Peers with the Kings Assent

to it 4. E. 3. n. 6. by which the King and Lords declare an Agreement made betwixt them, That the Lords shall not be held nor charged to give Judgment on others but their Peers; And that the Judgements then given shall not be drawn into Consequence, to oblige the Peers in time to come, to judge other then their Peers against the Law of the Land: This the Author of the Book will have to be an Act of Parliament, because it is said to be done in full Parliament: To which I answer, The Record it self shews it to be otherwise, The Title is, *Concordia ne trahatur in Consequentiam*; That is, an Agreement an Accord between Parties, that what is done shall not be drawn into Consequence, no Law to impose upon them, and to oblige them; And the expression, That it was done in full Parliament, and so the Commons present; signifies nothing, as to inforce what he would inter upon it. For admit that, yet it makes it not a Law, the Commons might be Witnesses to what was done,
but

The Jurisdiction of the
but were no Parties ; Which must
have been to make it a Law. They
must either have Petitioned for it be-
fore, or have given their Assent and
Approbation after ; it must either
have begun or ended in their House,
before it had gone to the King for his
Royal Assent, and then it had been
binding and the Law of the Land ;
but there was no such thing here. The
Occasion of it was this, The King had
prevailed with the Lords, against their
Wills and Protestations to the contra-
ry, as appears by the Record of that
Parliament, n. 2. even in a Manner
forced them, to condemn the Earl of
March, Sir *Simon de Beresford*, John
Matrevers, *Bogo de Bayons*, John *De-
varal*, *Thomas de Gourney*, and *Willi-
am of Ogle*, for the murther of *Edward
the Second*, and the death of the Earl
of *Kent*, all of them Commoners,
except the Earl of *March*, and none
of them called to answer, yet some of
them in hold, and others not ; Those
that were in hold were presently exe-
cuted, and great rewards promised to
and who

who should bring in the rest, quick or dead. The Lords afterwards troubled in Conscience at what they had done, and moved with just indignation against themselves, made first a Protestation, *That they would not for the future be Tenus & Chargez a rendre Jugement sur autre que sur leurs Pairs, be tyed and charged to judge any but their Peers;* and this they get the King to consent unto, and happily for the more Solemity of the businēs, would have the King declare so much before the Commons ; And their Indignation, together with their Precaution not to be again necessitated to do the like, might carry them further to say, *They would not be obliged to judge any but Peers against the Law of the Land ;* though it will very well bear an other Construction, that it was their being in that Manner forced and press'd to do, what otherwise they would not have done, which they declared to be against the Law of the Land, because it is against the Freedom of Parliaments ; and not their Judging of

Com-

Commoners to be against the Law of the Land. But admit it, those Lords then thought it to be so, and that they ought not to judge any but their Peers; Doth that bind up the House of Peers, that they may never be of another mind? They are still Masters of their own Orders, and alter them and change them as they think good, And I look upon this Order, as no other, nor of no more force, than that made 8. E. 1. which is in the Appendix to the *Placita Parliamentaria*, p. 442. concerning Petitions, which I have mentioned before, and which succeeding Parliaments would not observe. And that they did not observe this neither, of their not Judging Commoners, is apparently proved by the constant practice of the House of Peers in all succeeding times. And one thing more would be taken notice of in the Proceedings of the House of Peers at that time, after their precipitate and Illegal Condemnation of those Persons, without ever calling them to answer; The Earl of March

a Peer of the Realm, was condemned and executed as well as the Commoners, and this was looked upon as a President of ill Consequence for the Peerage, and therefore they would have a Law to prevent it, and *that the Nobles of the Land should not be put to answer but in open Parliament by their Peers*, which they long endeavoured before they could obtain it: So as in 15. Ed. 3. n. 6. they adjourned the Parliament severall dayes upon that point, and at last appointed four Earls, four Bishops, four Barons to draw it up into form, and got it passed into an Act; but two years after the King got that Act to be repealed: And so far they likewise took care of Commoners in that Parliament of 15. Ed. 3. as to have it enacted also, *That no man should be impeached by Commandment, without process of Law*. These were Acts of Parliament and Laws which did bind, but the other of their judging none but Peers was a meer particular Order of the House, an Agreement betwixt the King & them, which

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~~was no wayes binding to posterity, and
alterable still at pleasure by the same
House that made it.~~

Another Battery raised by that Author against the Jurisdiction of the House of Peers, is from the Statute of Appeals, r H. 4. c. 14. And with that he would overthrow the force of that President of *John Hall*, condemned by the Lords, in that first year of H. 4. for the death of the Duke of *Glocester* in the 21 of R. 2. as if that power were now taken from them by that Act, and that the Commons by it had taken care, it should not be so done by them any more, for so he saith p. 23. Which by his leave concerns nothing the proceedings against *Hall*, and will let (I may say) concern the present question of the proceedings of this House of Lords in the Case of *Skinner*: For that Statute provides only for Tryall of Appeals; where a private person next of kin is or shall be prosecutor, which was not in *Hall's Case*, the prosecution being in the ordinary way at the Kings suit. It is true, that in the

it of R. 2. an horrible abuse had been
in point of Appeals: Certain Lords, not
by Law capable of it, taking upon
them to be Appellants, and in their
own Names accusing in Parliament se-
veral persons, Peers of the Realm and
Commoners, of divers Treasons and
Murthers, making themselves Judges
and Parties, and condemning them to
die, without, nay against, all forms of
Law, &c rules of Justice, by w^{ch} means
many innocent men lost both lives
and Estates. This it is that is provi-
ded for by that Statute, and care taken
it shall be so no more; nor the Ordina-
ry prosecution of Offenders in the
Kings Name, as *Wells* was; Though
one particular in that Tryal is confes-
sed to have been most Irregular and
Illegal, which was examining him a-
gainst himself upon Oath, but that is
not material to the point in question,
which is, Whether the Statute of Ap-
peals forbids such Tryals, as assuredly
it doth not, nor any of those former-
ly instanced in to have past in the
House of Peers. And least of all can

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it concern the late Proceedings in the
business of *Skinner* and the East India
Company, in which there is no charge
either of Treason or Felony, where
an Appeal onely can take place, to
bring it within that Statute.

In the same 23d page, another
Argument is used against this Jurisdiction
of the Peers, in which that
Author hath certainly missed his Mark,
for nothing could be produced, that
makes more for that Jurisdiction : He
saith That the Subject of *England* hath
moderated Parliaments, and by express
words determined, *that some things*
cannot be done in Parliament, as that any
should be impeached there of that con-
cerns his Franktenement or Heredita-
ment, and vouches for his Authority,
Rot. Parl. 10. H. 6. m. 35. where in-
deed there is such a desire of the
House of Commons, *That none shall*
be compelled to answer in Parliament
concerning his Franktenement. But let
him tell us, how they sped with their
desire, if their Petition was granted, to
make it a Law and binding : Far from

it : The Answer is, *Le Roy j'advisera*,
The King will advise, which in Parlia-
mentary Language is a flat Denyal ;
So then no alteration was made of
what was formerly the Usage and
Power of Parliament, but all contin-
ued as it was before : And that be-
fore they did in Parliament try and
judge such matters, is apparent by the
desire of the Commons, that it should
not be so hereafter ; for if no such
thing was, their desire, it should be no
more so, was ridiculous ; but it was so
it seems, and their desire that it should
be altered being rejected, leaves it in
the same state it was, that the Parlia-
ment might continue still to do it.

p. 143.
And by the Parliament in these
Cases is to be understood onely the
House of Peers, for there singly lies
the Judicial Power, as is confessed and
acknowledged by the House of Com-
mons themselves, 1. H. 4. n. 79. (so it
is in the Record, but in the Exact A-
bridgment it is n. 80.) *That all Judg-*
ments appertain to the King and Lords,
and nat to them ; but when out of
especial

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The Jurisdiction of the
special grace some are communicated
unto them, and therefore they where de-
sire, that the Records may be so entered,
~~as they may not be made Parties to them;~~
So careful they were then not to seem
to encroach upon that Power. And
whereas the Authors that Pamphlet
would make a difference upon the
Personal presence of the King in those
times in the House of Lords, ~~that~~
~~though they might do it then in some~~
~~Cases, it followed not, the Lords might~~
~~do it alone the King not there,~~ it is but
a fancy of his, making a difference,
where in truth there is none. I have
proved it before, that the Court is the
same, be the King present or absent;
The King in Person can judge no
man, nor dispose of no mans Life or
Estate, therefore it is a Maxim, ~~that~~
~~the King can do no wrong;~~ the rea-
son is, because he of himself and by
his own particular and personal Au-
thority can give away no mans Right,
no not any ones pretended Right,
where a man hath only a possession,
~~though without right,~~ the King a-
lone

None in *propria Persona* can give no Rule in it, but it must be tryed in one of his Courts; And his Judges and Ministers (whom he intrusts with his Regal Power, that with which he is himself invested in his Politick Capacity, and which he conveys to them, making them thereby the Dispensers of his Royal Justice unto all his Subjects,) they must be the Persons that do the wrong, if any be done, It is *Curia Regis* that doth it, and not the King, though he sit in Court in Person; And so the Stile is *Videtur Curia*; And the Pleas Commonly end with this Declaration of the Party, *Hec paratus sum Verificare pro ut Curia ordinaverit*; and when mention is of anything done contrary to the formes of proceeding, *Non sic in Curia ista usitatum est*, is the expression; as it is in the President of the 18. E. I. so much insisted upon by the House of Commons. So hath it been in all times the Authority of the Court, to which the Law requires obedience; When *Henry the third would have his Brother*

Richard

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Richard Duke of Cornwall confirm'd
the grant of a Mannor to one *Waleran*
a Germain (to whom King *John* had
given it, and which the Duke of *Corn-
wall* said belonged to his Dutchy of
Cornwall, and had therefore taken
possession of it) his Answer was, *That*
*he was willing Curia Regis subire Ju-
dicum & Magnatum Regni*, that was
to say, the Judgment of his Peers in
Parliament: and when the King said
angrily to him, He should then quit
the Kingdom, if he would not deli-
ver up the Mannor; his reply (as
Matthew Paris Records it) was, *Quod*
*nec Walerano Jus suum redderet, nec si-
ne Judicio Parium suorum e Regno exi-
ret*; He would neither quit his Right
nor the Kingdom, but by the Judge-
ment of his Peers: Such difference
was then made betwixt the Kings Per-
sonal Command, and an Order of the
House of Peers in disposing of mens
Rights, which makes it very apparent,
That the Kings Personal presence
could not add any thing to, or make
any alteration in, the Jurisdiction of
any

any Court. But enough of this ; especially considering what is said before upon the same Subject.

Some other Evasions I find in that Book to elude the Lords Judicature, and take off the force of some Presidents which have been cited in maintenance of it, which I think are but evasions, and work no great effect. As that of the Banishment of *Alice Perrers or Pierce*, which that Author will prove to have risen from the Commons, and to have been at their Petition ; because *Walsingham* a Cloistered Monk saith so, contrary to the Record in the Tower, where he finds no such thing, where certainly it would not have been omitted, had it been so, that being so essential a part of a Transaction of Parliament, that it could not have been left out by the Clerk in the Journal Book ; And whereas to fortifie *Walsingham's* Testimony, he saith he then lived, as if he had been *Testis Ocularis*, I doubt much if he was then born, or so young he must have been, that he could little take

notice of the passages of the time, for
Balaeus in his Book *De Scriptoribus
Britanicis*, saith he flourished in the
year 1440. under *Henry* the sixth ;
when he died we know not, but had
he died then, or soon after, he must
have been sixty three years old, if so be
he was in the World when *Alice Pierce*
was banished ; for the Judgement of
Alice Pierce was the first year of *Ri-
chard* the second, which was in 1377.
So as what he writes could be but by
hearsay. Which is observed by me,
onely to shew what weak proofs that
Author brings to make good his Af-
fertions, and shews the badnes of his
Cause ; Not that I think it at all mate-
rial to the point in question, whether
or no it was at the request of the Com-
mons, that *Alice Pierce* was judged by
the Lords, which would not at all e-
vincé what he would infer upon it,
that the House of Lords hath not of it
self Cognisance of the Cause of a
Commoner, nor can judge him for
an Offence, whe:her Capital or of a
Lesser Nature, but that the House of
Com-

Commons, making it their desire, qualifies them for it: Which is a strong Argument of the contrary, and proves that the House of Commons doth thereby acknowledge their Judicature: For ridiculous it were to think, That any Act of that House could create a new Power in the House of Lords, which it had not in it self before, and which afterwards must cease, till it please the House of Commons to give again a new life and being to it: As if the House of Lords were but a Property, which cannot move of it self, to have the Verse said of it, *Ducitur ut nervis alienis mobile lignum.* I am sure it hath not been so heretofore, nor do I think the House of Commons will own that Authors Opinion. And so the Judgment of *Hall* for the death of the Duke of *Glocester*, that too forsooth must be at the request of the Commons, and so be an Act of Parliament, and the proof for it is, that at the end of the Roll they thank the King for his just Judgment. But if the Gentleman would have perused

Placita Coronæ.
Hen. 4: n. 17.

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the whole Roll, he would easily have
been satisfied, that the thanks of the
Commons related not to *Hall's* con-
demnation, but to the proceedings of
the King and House of Peers against
Sir William le Scroop, Sir Henry Green,
and *Sir John Buffe*, who had been a-
ctive for *Richard* the second, and were
looked upon as principal Authors of
the Miscarriage of his Reign: For at
the request of the Commons, the
Lords confirmed a Judgment former-
ly given against them in some of the
Kings Courts, (not in Parliament) and
the King declaring, That though he
took the forfeiture of their Estates ac-
cording to the Sentence given upon
them, yet he understood not, there
should be by it any Infringement of
the Statute, which said, *That no mans*
Estate should be forfeited after his death,
who had not been convicted whilst living,
for these persons he said had been so
convicted; Whereupon the Commons
thanked the King for his righteous
Judgment, and thanked God for gi-
ving them such a King: This had no
rela-

relation at all to the business of *Hall*; And in the Record it is an Article by it self of what had passed in Parliament another day. So for the proceeding against *Gomenix* and *Weston*, that too must be at the request of the Commons, and consequently an Act of Parliament; Whereas the Commons had onely in general desired, that all such as had delivered up any of the Kings Forts and Castles unduely, might be called to account for it in that Parliament, and be punished for it according to their demerit by the Judgment of the Lords, who thereupon commanded the Lieutenant of the Tower to bring before them those two, who were already in hold for their several Facts in that kind, whom they tryed and condemned, and proceeded likewise against several others, as *Cressingham*, *Spikesworth*, *Trevit*, and many more guilty of the same Crime, whom they converted before them; and Sentenced, some to death, some to other punishments according to the Quality of their Offence: Now,

I do ask if in common sense it can be construed, that the Commons were at all Parties in the prosecution of these several Offenders: But admit, they had particularly impeached every one of them (which is more, than to desire such a Delinquent may be brought to his Tryal, and that the Lords would do Justice on him as they find Cause, and much more, than onely to design the Crime, and leave it to the Lords to find out the Persons; For in an Impeachment they examine the matter, and first find themselves the Party to be guilty, and then they follow it against him, and prove him so, before the Lords) Doth this at all give them any part in the Judgment? or must it not necessarily be understood, that the Judicature is naturally and constantly lodged with the Lords, and the House of Commons part then is onely to bring the Offender before the Lords to be tryed? This very Record of the Proceedings in the Lords House against *Gomeric* and *Weston* shews it so to be, and proves the Judicature of the

the House of Peers as strongly as can
be. It runs thus, *Item par la ou sup-*
plié est par les Communes, que tous ceux
qui rendus & perdus Chatels ou Villes
par dela par uray defaut des Capitaines,
puissent estre a Response a Cest Parlement
& selon leur desert fortement punis par
agard des Seigneurs & Baronage, ef-
chiant le malueis ensample qils ont
donnez as autres qui sont Gardeins de
villes & Chatels, Commandé est a Sire
Alein de Buxball Conéstable del Tour de
Londres qe y face venir devant les Seig-
neurs en Parlement a Westminster le Ven-
dredy 27 Jour de Novembre l'an susdit
Jehan sire de Gomeniz & William de
Weston, &c. Item, Whereas it is prayed
by the Commons that all those, who have
delivered up and lost Castles and Towns
on the other side of the Sea by their own
default, being Captains of them, may be
put to their answier at this Parliament,
and according to their desert be severely
punished by the award of the Lords and
Baronage, for the eschewing of the evil
example, which they have given to o-
ther Guardians of Towns and Castles;

Com-

Command is given to Sir Allen de Buxhall Constable of the Tower of London, to bring before the Lords in Parliament at Westminster, upon Friday the 27th of November of the aforesaid year, John Lord of Gomeniz, and William of Weston, &c. Here the Commons desire that all such may be severely punished by the award of the Lords and Baronage; So it is their Award and their Judgment must punish, and this by the Commons confession; And you may observe further, that the Commons do not make any mention of any particular Person, but the Lords they command Sir Allein de Buxhall to bring *Gomeniz* and *Weston* before them such a day; But it is easie to trace the Author of the Pamphlet, where he was led out of the way, and that was by an other Pamphlet of the Privileges of the Baronage, which goes under Mr. Seldens Name, but hath as many mistakes in it as leaves, and there indeed it is said p. 15. That at the supplication of the Commons, that all those who have rendred Castles, be put

Due to their Answer, and that Allen,
Buxhall, Constable of the Tower, do
bring before the Lords such a day, Ge-
moniz and Weston, to answer the Arti-
cles which there shall be preferred for
the said Cause, they were so brought.
Mr. But the Record it self you see is
otherwise, which that Pamphlet it
seems never read. And for what he
further would infer, to make that and
all other Judgements at the prosecuti-
on of the Commons (admit they had
been so, which these were not) Acts
of Parliament, is a Fancy so ridicu-
lous, as it is not worth the answering,
which makes no difference between an
Act of Attainder, that passeth both
Houses, and afterwards hath the Kings
Assent, (as all other Laws have, which
is an effect of the Legislative Power, in
which either House hath an equal
Vote) and a proceeding before the
Lords against a Criminous Person in a
Judicial way, wherein the Commons
have nothing to do, as to the judging
of him.

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But one thing more in that Paragraph
let I cannot let pass, which is in ¶ 2.
The words are these, viz.

Kings giving judgment in Parliament
with the Lords Assent, I do confess
judgements there ought to be pro-
perly and punctually entred, as pro-
Par nostre Seigneur le Roy que est Sou-
verain juge en tous Cas, & par les Seign-
neurs Spirituels & Temporels ou l'affirm
des Communes de la Terre, ou a leur Pe-
tition, & Nentity par les Seigneurs Tem-
porals Seullement. That is, As given
by our Lord the King, who is Sovereign
in all Causes, and by the Lords
Spiritual and Temporal, with the assent
of the Commons of the Land, or upon their
Petition, and not by the Lords Temporal
alone. And for this he quotes in the
Margent, Rot. Parl. apud Leicester, 11.
16. which he delivers so Magisterially,
as any man would swear he had good
Authority for what he said, and that
his old French was some old Oracle of
Parliament: And I must confess upon
the first reading of this I was at a stand,
finding here such a positive Precept,
contrary

contrary to what I had still believed, both in the Affirmative (it must be by the Kings and Lords, with the Assent of the Commons) and Negative (not by the Lords alone.) But when I came to examine this Assertion by the Record; I found there was a foul mistake, whether purposely or ignorantly I judge not: For what was delivered by Counsel, to bolster up his Clients pretensions, is there produced, as the Rule of the Court: And an Error assigned to reverse a former Judgment, which is but the Allegation of a Lawyer, that draws up his Clients Plea, is made an Argument to controvert and condemn a constant usage of the House of Peers. It was in the Case of the Earl of Salisbury, Who brought a Writ of Error in the Parliament 2. H. 5. to reverse the Judgment given 2. H. 4. n. 30. by the Lords Temporal alone with the Kings Assent, by which Judgment the Earls of Kent, Huntington and Salisbury, and some others, who had been some stain, some taken in actual Rebellion by other the Kings Subjects, and by them put to death

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The Jurisdiction of the
depth without form of Law, were declar-
ed attainted of Treason, and their E-
states forfeited; For the reversal where-
of Thomas the Son Earl of Salisbury,
amongst the Errors assigns this for one,
as a principal one, that it was given by
the Lords Temporal alone with the King,
whereas it should have been by the King,
Lords Spiritual and Temporal, with the
Assent of the Commons, or at their Peti-
tion; And what follows upon this? In-
deed if the Judgment had been rever-
sed, though perhaps upon some other
Error, (for several others were assign-
ed) there might have been some co-
lour for the Gentlemans Assertion,
and the Inference he would make up-
on it: But so far from it, that the Judg-
ment formerly given by the Lords
Temporal alone, with the Kings Ap-
sent, is fully ratified and confirmed:
Which is as strong an Argument to
convince and prove the Right of Judi-
cature lodged in that House as is pos-
sible.

And so I shall leave that Pamphle-
ter, and now conclude, only addin-

this as mine own sense and wch concerning the Lords exercising this Jus dicature, and in truth what hath been my Observation of their Lordships own Intention and Resolution, which themselves have still declared and practised in their execution of it; which is this.

First, That though they have an undoubted Right to such an universal unlimited Power, of taking cognisance of all Manner of Causes of what nature soever, and of the Judging and Determining them, if no particular Law do otherwise dispose of those Cases.

Secondly, That their Ancestors have so exercised this Power in all times Ancient and Modern, which conveys down that Right to them, according to the Maxim; *Usus & Consuetudo est Lex Parlamenti*, what hath been alwayes used by Parliaments is the Law of Parliaments.

Thirdly,

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The Jurisdiction of the
Thirdly; That this House of Lords
hath ever been careful not to entertain
any business, which was determinable
in Inferior Courts, so as charged with
doing it, they may well take up the
Psalrists complaint, and say, They
~~hath laid to our charge~~ things that we
knew not, and would have us ~~refuse~~
what we took not away; Though if the
Lords had now taken upon them to
exercise such an universal Power of
Judicature, they had meddled but with
their own, which belongs to them,
and had done no man wrong, had gi-
ven no just cause of complaint, they
had but trodden in their Ancestors
steps, continued that in the House of
Peers, which it hath ever been posses-
sed of. And would it not be a shame
for them to leave their Posterny in a
lower and more curtailed condition
then their Predecessors left them, to
give up a Right and a Priviledge o
theirs, which (as hath been shewed) i
so necessary to the Publick Justice
of the Kingdom? But they have ne
done that, which is said of them: An
ther

there is no colour for any complaint. Why then quarrel with them? Why at this time stir a question which lay as sleep; and for ought we know had never awaked, nor had else ever been stirred? Is this a time to divide into evitable needless differences? Were it not more desirable, nay more necessary to reconcile affections, to unite endeavours, and to conjoy the Councils, and Power, and Authority of the two Houses of Parliament, for composing the differences which already are, rather than to create new, and especially when no cause is given for it? For it may be truly said, Heile is not *Causa litigandi*, if there be not *Anima litigandi*. But it be calmly and coolly considered, what the Lords have done, if they have given any cause of difference, if this Apple of Dissention grew with them, which hath been maliciously cast in by some of the East India Company, and too readily taken up by those whom they had surprised and abused by misinformations. Their Lordships have now only

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only done Right to a poor man, that
was oppressed to ruine by potent Ad-
versaries, who had done the wrong in
a Forreign Countrey, and so were no
wayes punishable for it here in the or-
dinary Course of Law, nor the poor
man atty wayes relievable, (for no part
of his Case, as hath been shewed, was
within the Compast of the Common
Law; Their new devise of a Fiction,
which is in truth meerly a Fiction, in
the whole of it, without any real foun-
dation in Law, Reason, or good Con-
science as being grounded upon a
falshood, and yet this Fiction (I say)
such as it is, not applicable to Trespa-
ses) so as here had been an absolute
Failer of Justice, if the Lords had not
undertaken it; And they undertaking
it also, not of themselves, as making it
their own Act, but upon the Kings ear-
nest Recommendation, when his Ma-
jesty and Counsel had in vain spent
some years in endeavouring to per-
swade those severe Adversaries of this
poor man, to make him some reasona-
ble Reparation, and they would not,*
ylo

Fourthly,

Fourthly, And notwithstanding all this, that their Lordships should be quarrelled with, decried, misrepresented by Offenders, whom they had before them ; and that, even before they had determined any thing concerning them: yet the Petition of those Offenders full of Falsities, not onely to be received, which (under Correction, and with great respect be it spoken of them who did receive it) was a Manifest Breach of Priviledge, but to be believed, and Votes to be passed thereupon, *That the Lords had done that, which was not agreeable to Law, and which tended to deprive the Subject of the benefit of the Law.*

Fifthly, Though these things might well provoke their Lordships to vindicate themselves, not only by asserting their Right to so great and extensive a Power, (which they have done upon good grounds, and with evincing Arguments) but even employing and exercising it in its full latitude ; And the same Maxim would justifie them in
Jan Bb their

their so doing, which the Poet brought to justifie *Cæsar* in his vast undertakings, when the Senate by denying him his just demands, gave him the occasion and the boldnes to make himself Master of all, take that which was denied him and all the rest, which happily he had else never attempted, the Maxim is, *Omnis dat qui justa negat*: So quarrelling with the Lords now upon so unjust a ground, and denying them such an apparent Right as they had to give Relief to *Skinner*, would plead their excuse to all the World, if they should extend their Power as far, as their Ancestors ever did.

But we will hope better things from them, and that (as the Apostle saith) *their Moderation shall appear to all men*, and that no ill usage will make them depart from their resolution of not interposing their Power, where the Law can give a remedy, nor entertaining any Cause, which is properly determinable in Inferior Courts, For
that

that certainly, however it might be Lawful, would not be expedient, and good men will onely do that which is expedient, as being that which is most acceptable to God, and most beneficial to men, which Parliaments will I hope ever do, It shall be my Prayer they may, to which I am sure all good people will say Amen.

F I N I S.
